

# EXHIBIT 1

Case No. SCV261819  
01-16-2018  
Civil Case Cover Sheet



CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Leslie R. Perry 062390</b> Perry, Johnson, Anderson, Miller & Moskowitz, LLP 438 First Street, 4th Floor Santa Rosa, CA 95401 TELEPHONE NO.: (707) 525-8800 FAX NO.: (707) 545-8242 ATTORNEY FOR (Name): <b>Plaintiffs</b>		FOR COURT USE ONLY  <div style="font-size: 24pt; font-weight: bold;">ENDORSED FILED</div> <div style="font-size: 18pt;">JAN 16 2018</div> SUPERIOR COURT OF CALIFORNIA COUNTY OF SONOMA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>Sonoma</b> STREET ADDRESS: <b>600 ADMINISTRATION DRIVE</b> MAILING ADDRESS: <b>ROOM 107J</b> CITY AND ZIP CODE: <b>SANTA ROSA, CA 95403</b> BRANCH NAME: <b>Civil</b>		
CASE NAME: <b>Lewis v. Liberty Mutual Insurance Company</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: <b>SCV 261819</b> JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)  <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)  <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)  <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input checked="" type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)  <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)  <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)  <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)  <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20)  <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)  <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☐ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): One
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 16, 2018

Leslie R. Perry

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2



CM-010

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)-Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (not asbestos or toxic/environmental) (24)  
Medical Malpractice (45)  
Medical Malpractice-Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (not medical or legal)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (not unlawful detainer or wrongful eviction)  
Contract/Warranty Breach-Seller Plaintiff (not fraud or negligence)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case-Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (not provisionally complex) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ-Administrative Mandamus  
Writ-Mandamus on Limited Court Case Matter  
Writ-Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal-Labor  
Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal.

## Rules of Court Rules 3.400-3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims  
(arising from provisionally complex case type listed above) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (non-domestic relations)  
Sister State Judgment  
Administrative Agency Award (not unpaid taxes)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (not specified above) (42)  
Declaratory Relief Only  
Injunctive Relief Only (non-harassment)  
Mechanics Lien  
Other Commercial Complaint Case (non-tort/non-complex)  
Other Civil Complaint (non-tort/non-complex)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (not specified above) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief from Late Claim  
Other Civil Petition

Case No. SCV261819  
01-16-2018  
Summons and Complaint

**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

Liberty Mutual Insurance Company; Liberty International Underwriters; and DOES 1 through 50

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Nicolette Lewis; Alexis Lewis; Margrett Lewis and Jeffrey Lewis

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**

**JAN 16 2018**

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SONOMA

BY JENNIFER ELLIS DEPUTY CLERK

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos arxentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SONOMA COUNTY SUPERIOR COURT  
600 ADMINISTRATION DRIVE  
SANTA ROSA, CA 95403

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Leslie R. Perry 062390 Perry, Johnson, Anderson, Miller & Moskowitz, LLP  
438 First Street, 4th Floor (707) 525-8800  
Santa Rosa, CA 95401

CASE NUMBER  
(Número del Caso)

SCV

261819

DATE: **JAN 16 2018**

(Fecha)

**ARLENE D. JUNIOR**

Clerk, by  
(Secretario)

**JENNIFER ELLIS**

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☒ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):  
under: ☐ CCP 416.10 (corporation)  
☐ CCP 416.20 (defunct corporation)  
☐ CCP 416.40 (association or partnership)  
☐ other (specify):

4. ☐ by personal delivery on (date):

SCV - 261819

CVPS001

Summons Issued

45379



- ☐ CCP 416.60 (minor)  
☐ CCP 416.70 (conservatee)  
☐ CCP 416.90 (authorized person)



**FILED**

JAN 16 2018

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SONOMABY                      DEPUTY CLERK

1 Leslie R. Perry, Bar No. 62390  
 2 John E. Johnson, Bar No. 114902  
 3 Heather-Ann T. Young, Bar No. 283211  
 PERRY, JOHNSON, ANDERSON,  
 4 MILLER & MOSKOWITZ, LLP  
 438 1<sup>st</sup> Street, 4<sup>th</sup> Floor  
 Santa Rosa, California 95401  
 Telephone: (707) 525-8800  
 5 Facsimile: (707) 545-8242

SCV - 261819  
 CF  
 Complaint Filed  
 45378



6 Attorneys for Plaintiffs  
 ALEXIS LEWIS, JEFFREY LEWIS,  
 7 MARGRETT LEWIS, and NICOLETTE  
 LEWIS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SONOMA

11 ALEXIS LEWIS, JEFFREY LEWIS,  
 12 MARGRETT LEWIS, and NICOLETTE  
 LEWIS,

Case No. *SCV***261819****COMPLAINT**

1) Direct Action for Recovery of  
 Judgment under Insurance Code  
 §11580(b)(2)

Plaintiffs,

v.

15 LIBERTY MUTUAL INSURANCE  
 COMPANY, LIBERTY  
 16 INTERNATIONAL UNDERWRITERS,  
 and DOES 1 through 50, inclusive,

UNLIMITED CIVIL ACTION

Judge:

Complaint Filed:  
 Trial Date:

Defendants.

19 Plaintiffs ALEXIS LEWIS, JEFFREY LEWIS, MARGRETT LEWIS, and  
 20 NICOLETTE LEWIS complain of Defendants, and each of them, as follows:

21 1. Defendant Liberty Mutual Insurance Company is a Massachusetts corporation  
 22 authorized to do and doing business in California. Liberty International Underwriters is a  
 23 division of Liberty Mutual Insurance Company with its corporate headquarters in San  
 24 Francisco, California. Liberty Mutual Insurance Company and Liberty International  
 25 Underwriters are hereafter referred to as "Liberty Mutual."

26 2. EcoSmart, Inc., is a California corporation with its corporate headquarters in  
 27 Los Angeles, California. EcoSmart developed, marketed, merchandized and sold an ethanol  
 28 based product under the trade name e-NRG for use in decorative fire appliances.

1           3.       Plaintiffs Alexis Lewis, Jeffrey Lewis, Margrett Lewis, and Nicolette Lewis at  
2 all times mentioned herein were residents of the County of Sonoma, and the State of  
3 California.

4           4.       Plaintiffs do not currently know the names of DOES 1 through 50, and  
5 therefore sue said Defendants by said fictitious names. Plaintiffs allege that each of these  
6 Defendants is in some way liable and at fault for the events and happenings referred to herein,  
7 and each is responsible for the damages incurred by Plaintiffs. Plaintiffs will amend this  
8 Complaint to allege each Defendant's true name and capacity when ascertained.

9           5.       EcoSmart sold e-NRG to Outdora for retail sale. Outdora is a California  
10 corporation with its principal place of business in Sonoma, California. On April 7, 2014,  
11 Plaintiff Margrett Lewis purchased four gallons of e-NRG from Outdora for use in her outdoor  
12 decorative fire appliance commonly referred to as a fire bowl.

13           6.       On June 8, 2014, Plaintiffs Nicolette and Alexis Lewis were using the fire bowl  
14 at their house in Sonoma, California, to heat marshmallows with their two best friends to make  
15 s'mores when they thought the fire was out and that the fire bowl needed to be refilled.  
16 Plaintiff Alexis Lewis was in the process of re-fueling the fire bowl with a one-gallon fuel  
17 container of e-NRG when vapors from the fuel container ignited causing an explosive  
18 discharge of ethanol fuel and fire, igniting her twin sister Nicolette Lewis. The flames fully  
19 engulfed Nicolette Lewis causing severe third degree burns to her face, neck, chest, arms, legs  
20 and feet. As Plaintiffs Jeffrey Lewis and Margrett Lewis rushed out of the house in response  
21 to Plaintiff Nicolette Lewis' blood curdling screams, they saw their daughter fully engulfed in  
22 flames. As Plaintiffs Margrett Lewis and Jeffrey Lewis attempted to put out the flames on  
23 Plaintiff Nicolette Lewis, and the area around her, they suffered burn injuries.

24           7.       Plaintiff Nicolette Lewis suffered 27 percent total body burns with third degree  
25 burns to her face, neck, chest, arms, legs and feet, and was hospitalized for 30 days at Shriner's  
26 Hospital with life threatening injuries. As a result of massive burn scars, Plaintiff Nicolette  
27 Lewis had to undergo split thickness skin grafting and skin grafts were taken from 32 percent  
28 of her body that was not burned. Plaintiff developed skin contractures and keloid scarring

1 which interfered with normal body function, resulting in over twenty surgical procedures, over  
2 twenty laser treatments, hyperbaric oxygen therapy, leach therapy and multiple debridements  
3 causing severe pain and emotional distress.

4 8. Plaintiffs Alexis Lewis, Margrett Lewis and Jeffrey Lewis suffered burn  
5 injuries and severe emotional distress, including post-traumatic stress disorder, depression and  
6 anxiety which has and will continue to affect their mental and physical health.

7 9. The fuel container used in one gallon fuel containers was defective in design for  
8 lack of a flame arrestor. A flame arrestor is a simple wire or plastic mesh that fits in the neck  
9 of the fuel container and prevents flames from entering the container, thus preventing the  
10 discharge of flaming ethanol fuel. EcoSmart was aware of the need to modify their fuel  
11 containers to include flame arrestors prior to the sale of e-NRG to Plaintiff Margrett Lewis and  
12 after the subject accident equipped all ethanol fuel containers sold under the name e-NRG with  
13 flame arrestors.

14 10. EcoSmart was served with a Summons and Complaint by Plaintiffs in an action  
15 filed in the Sonoma County Superior Court entitled *Lewis v. EcoSmart, et al.*, Case No. SCV-  
16 256907 alleging product defect, negligence and negligent infliction of emotional distress.

17 11. Liberty Mutual issued a policy of insurance covering EcoSmart, Policy No.  
18 ME-CAS-12-438176, covering negligence and product defects resulting in bodily injury with a  
19 coverage period of April 30, 2013, to April 30, 2014. The policy was renewed on April 30,  
20 2014, with coverage to April 30, 2015, under Policy No. SY-CAS-13-438176. Coverage  
21 under the policy period commencing April 30, 2014, substantially reduced coverage limits and  
22 included claims made provision without providing 60 days' notice as required under California  
23 law.

24 12. Liberty Mutual declined to provide a defense and indemnification in *Lewis v.*  
25 *EcoSmart, et al.*, Case No. SCV-256907 because the claim was filed after June 30, 2014, and  
26 the accident occurred on June 8, 2014.

27 13. Plaintiffs allege that Liberty Policy No. ME-CAS-12-438176 was in full force  
28 and effect on June 8, 2014, and provided full coverage for the injuries and damages suffered

1 by Plaintiff because the terms of coverage and the amount of coverage was substantially  
2 reduced or excluded without Liberty Mutual giving EcoSmart the notice required by California  
3 Insurance Code section 677.2. Due to the failure of Liberty Mutual to give notice to  
4 EcoSmart, Policy ME-CAS-12-438176 coverage was extended by 60 days or until June 30,  
5 2014, pursuant to California Insurance Code section 678.1. The extended coverage under  
6 Insurance Code section 678.1 provides coverage for the injuries and damages suffered by  
7 Plaintiffs.

8 14. On or about November 8, 2015, EcoSmart filed for bankruptcy protection in  
9 U.S. Federal Bankruptcy Court, California Central, Case No. 2:15bk27139 due to the lawsuit  
10 filed by Plaintiffs in Sonoma County due to the denial of coverage and indemnity by Liberty  
11 Mutual as set forth above. By order of the Bankruptcy Court, Plaintiffs were allowed to  
12 proceed against EcoSmart's insurance carrier, to the extent there is coverage, but discharged  
13 EcoSmart for personal liability for debts.

14 15. On January 9, 2018, following testimony of experts and after review of  
15 declarations, medical records and reports, Judge Allan Hardcastle, Sonoma County Superior  
16 Court Judge, entered Judgment against EcoSmart in favor of Plaintiffs in Sonoma County  
17 Superior Court Case No. SCV-256907 for injuries and damages suffered by Plaintiffs as a  
18 result of the accident of June 8, 2014. The full amount in judgment against EcoSmart and in  
19 favor of Plaintiffs is: Nicolette Lewis, \$30,678,221.71; Alexis Lewis, \$4,095,763; Margrett  
20 Lewis, \$7,565.052; and Jeffrey Lewis, \$3,565,284. True and correct copies of the Judgments  
21 are attached as Exhibit A hereto.

22 16. Pursuant to California Insurance Code section 11580(b)(2), Plaintiffs are  
23 bringing a direct action against Defendant Liberty Mutual for the injuries and damages  
24 suffered on June 8, 2014, as set forth above. Defendant Liberty Mutual is liable for the  
25 injuries and damages suffered by Plaintiffs due to its wrongful denial of both coverage and  
26 defense under its policy of insurance with EcoSmart, Policy No. ME-CAS-12-438176, a copy  
27 of which is attached as Exhibit B hereto.

28 17. Plaintiffs request a finding that Liberty Mutual Policy No. ME-CAS-12-438176



provides coverage for Plaintiffs' injuries and damages arising out of the subject accident, that Liberty Mutual wrongfully denied coverage to EcoSmart, that Liberty Mutual wrongfully failed to provide a defense to EcoSmart and that Liberty Mutual is obligated to pay its policy limits to satisfy the judgments against EcoSmart and in favor of Plaintiffs as set forth above.


WHEREFORE, Plaintiffs pray for judgment as follows:

1. Full payment of the Judgments entered against EcoSmart in Sonoma County Superior Court Case No. SCV-256907 in favor of Plaintiffs;
2. Interest from the date of judgment;
3. For costs of suit; and
4. Such other relief as the Court determines is just and proper.

PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ, LLP

DATED: January 16, 2018

Bv:

  
LESLIE R. PERRY  
Attorneys for Plaintiffs  
ALEXIS LEWIS, JEFFREY LEWIS,  
MARGRETT LEWIS, and NICOLETTE  
LEWIS

PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ LLP

Case No. SCV261819  
01-16-2018  
Notice of Assignment

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA CIVIL DIVISION</b> 600 ADMINISTRATION DRIVE, ROOM 107-J SANTA ROSA, CALIFORNIA 95403-2878 (707) 521-6500 <a href="http://www.sonoma.courts.ca.gov">http://www.sonoma.courts.ca.gov</a>  Lewis vs Liberty Mutual Insurance Company	(FOR COURT USE ONLY)  <div style="text-align: center;"> <b>ENDORSED FILED</b>   <b>JAN 16 2018</b> </div> <div style="text-align: center;">         SUPERIOR COURT OF CALIFORNIA          COUNTY OF SONOMA       </div>
<b>NOTICE OF ASSIGNMENT TO ONE JUDGE FOR ALL PURPOSES, NOTICE OF CASE MANAGEMENT CONFERENCE, and ORDER TO SHOW CAUSE</b>	Case number: SCV-261819

**A COPY OF THIS NOTICE MUST BE SERVED WITH THE SUMMONS AND COMPLAINT  
AND WITH ANY CROSS-COMPLAINT**

**1. THIS ACTION IS ASSIGNED TO HON. PATRICK BRODERICK FOR ALL PURPOSES.**

Pursuant to California Rules of Court, Rule 2.111(7), the assigned judge's name must appear below the number of the case and the nature of the paper on the first page of each paper presented for filing.

**2. EACH DEFENDANT MUST FILE A WRITTEN RESPONSE TO THE COMPLAINT AS REQUIRED BY THE SUMMONS.**

A Case Management Conference has been set at the time and place indicated below:

Date: Tuesday, 05/15/2018	Time: 3:00 PM	Courtroom 16
Location: 3035 Cleveland Avenue, Santa Rosa, CA 95403		

3. No later than 15 calendar days before the date set for the case management conference or review, each party must file a case management statement [Judicial Council form #CM-110] and serve it on all other parties in the case. In lieu of each party's filing a separate case management statement, any two or more parties may file a joint statement.

4. At the conference, counsel for each party and each self-represented party must appear personally or by telephone [California Rules of Court, Rule 3.670(c)(2)]; must be familiar with the case; and must be prepared to discuss and commit to the party's position on the issues listed in California Rules of Court, Rule 3.727.

5. Pre-approved dispositions are recorded three (3) court days prior to the case management conference. These may be obtained by calling (707) 521-6883 or by going to <http://sonoma.courts.ca.gov/online-services/tentative-rulings>.

**ORDER TO SHOW CAUSE**

To Plaintiff(s), Cross-complainants, and/or their attorneys of record:

If, on the date shown above, you are not in compliance with the requirements stated in the California Rules of Court, rules 2.30, 3.110, and/or 3.720 through 3.771 inclusive, you must then and there show cause why this court should not impose monetary and/or terminating sanctions in this matter.

Pursuant to California Rule of Court, rule 3.221(b), information and forms related to Alternative Dispute Resolution are available on the Court's website at <http://www.sonoma.courts.ca.gov/self-help/adr>.



**ELECTRONIC SERVICE OF DOCUMENTS****Enabled by Local Rule 18.16**

Voluntary e-service is available in Sonoma County. The Court has pre-approved a Stipulation for cases in which the attorneys or parties choose e-service. A copy of the Stipulation is available under the "Civil" section in the "Division" tab of the Court website: <http://www.sonoma.courts.ca.gov>. The advantages of e-service to the parties include:

<b>SAVE MONEY</b>	Reduction in costs related to photocopying, retrieving, storing, messenger and postage fees. No special software is needed to use e-service
<b>SAVE TIME</b>	Instant service of your documents on all parties
<b>SAVE SPACE</b>	With 24/7 internet access to all documents, you do not need to house paper copies
<b>GAIN CERTAINTY</b>	Immediate confirmation of service for your records. Documents are not delayed in the mail or blocked by email spam blockers and firewalls

To take advantage of e-service, select an e-service provider and file the signed Stipulation with the Court. Parties can then e-serve documents through the selected provider. Information about e-service providers is available at the website for the Sonoma County Bar Association: <http://www.sonomacountybar.org>. The Court does not endorse one provider over another.

**To learn more about available e-service providers and their fees, please visit their website**

***Note:** Hard-copy pleadings are required to be filed with the Court in accordance with applicable provisions of the Code of Civil Procedure, California Rules of Court and local rules. You do not need to provide a courtesy copy of a served document to the specific department in which the matter has been assigned.*

**DISCOVERY FACILITATOR PROGRAM**

Effective January 1, 2008, the Sonoma County Superior Court promulgated Sonoma County Local Rule 4.14 which established the Discovery Facilitator Program. Participation in the Discovery Facilitator Program shall be deemed to satisfy a party's obligation to meet and confer under Sonoma County Local Rule 5.5 and applicable provisions of the Code of Civil Procedure and California Rules of Court. This program has been providing assistance in resolving discovery disputes and reducing the backlog of matters on the law and motion calendars in our civil law departments. The Sonoma County Superior Court encourages all attorneys and parties to utilize the Discovery Facilitator Program in order to help resolve or reduce the issues in dispute whether or not a discovery motion is filed.

There is a link to Local Rule 4.14 and the list of discovery facilitator volunteers on the official website of the Sonoma County Superior Court at <http://www.sonoma.courts.ca.gov>. On the home page, under the "AVAILABLE PROGRAMS & HELP" section, click on »[Discovery Facilitator Program](#). You can then click on either "Local Rule 4.14" to obtain the language of the local rule, or "List of Facilitators" for a list of the volunteer discovery facilitators and accompanying contact and biographical information.

Case No. SCV261819  
01-23-2018  
First Amended Summons and First  
Amended Complaint

FIRST AMENDED COMPLAINT  
**SUMMONS**  
**(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

Liberty Mutual Insurance Company; Liberty International Underwriters; and DOES 1 through 50

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Nicolette Lewis; Alexis Lewis; Margrett Lewis and Jeffrey Lewis

FOR COURT USE ONLY  
 (SOLO PARA USO DE LA CORTE)  
**FILED**  
 SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SONOMA

**JAN 23 2018**

BY

Deputy Clerk

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
 (El nombre y dirección de la corte es):

SONOMA COUNTY SUPERIOR COURT  
 600 ADMINISTRATION DRIVE  
 SANTA ROSA, CA 95403

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
 Leslie R. Perry 062390 Perry, Johnson, Anderson, Miller & Moskowitz, LLP  
 438 First Street, 4th Floor (707) 525-8800  
 Santa Rosa, CA 95401

CASE NUMBER  
 (Número del Caso):  
 SCV-261819

DATE: **JAN 23 2018**  
 (Fecha)

**ARLENE D. JUNIOR**

Clerk, by  
 (Secretario)

Deputy  
 (Adjunto)

**ORISELDA ZAVALA**

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)



**NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.  
 2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):  
 under: ☐ CCP 416.10 (corporation)  
☐ CCP 416.20 (defunct corporation)  
☐ CCP 416.40 (association or partnership)  
☐ other (specify):

4. ☐ by personal delivery on (date):

SCV - 261819  
 CVPS001  
 Summons Issued  
 46415



- ☐ CCP 416.60 (minor)  
☐ CCP 416.70 (conservatee)  
☐ CCP 416.90 (authorized person)

**SUMMONS**

Page 1 of 1



**ENDORSED  
FILED**

**JAN 23 2018**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA**

1 LESLIE R. PERRY (SBN 062390)  
JOHN J. JOHNSON (SBN 114902)  
2 HEATHER-ANN T. YOUNG (SBN 283211)  
PERRY, JOHNSON, ANDERSON,  
3 MILLER & MOSKOWITZ, LLP  
438 First Street, Fourth Floor  
4 Santa Rosa, CA 95401  
Telephone: (707) 525-8800  
5 Facsimile: (707) 545-8242

6 Attorney for Plaintiffs  
MARGRETT LEWIS, NICOLETTE LEWIS,  
7 ALEXIS LEWIS and JEFFREY LEWIS

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SONOMA

10 NICOLETTE LEWIS, ALEXIS LEWIS,  
MARGRETT LEWIS; and JEFFREY LEWIS

) CASE No. 261819

) Unlimited Civil Action

12 Plaintiff(s),

) **FIRST AMENDED COMPLAINT**

) (1) **Direct Action for Recovery of**  
Judgment under Insurance Code  
Section 11580(b)(2)

13 vs.

) (2) **Breach of Contract**

14 LIBERTY MUTUAL INSURANCE COMPANY ,  
LIBERTY INTERNATIONAL UNDERWRITERS,  
15 and DOES 1 through 50, inclusive,

) Department: 16

) Judge: Hon. Patrick Broderick

) Trial Date: not yet set

17 Defendant(s).

19 Plaintiffs ALEXIS LEWIS, JEFFREY LEWIS, MARGRETT LEWIS, and

20 NICOLETTE LEWIS complain of Defendants, and each of them, as follows:

21 1. Defendant Liberty Mutual Insurance Company is a Massachusetts corporation  
22 authorized to do and doing business in California. Defendant Liberty International Underwriters  
23 is a division of Liberty Mutual Insurance Company with its corporate headquarters in San  
24 Francisco, California. Defendants Liberty Mutual Insurance Company and Liberty International  
25 Underwriters are hereafter referred to as "Liberty Mutual."

26 2. EcoSmart, Inc., is a California corporation with its corporate headquarters in  
27 Los Angeles, California. EcoSmart developed, marketed, merchandized and sold an ethanol  
28 based product under the trade name e-NRG for use in decorative fire appliances.

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1           3.       Plaintiffs Alexis Lewis, Jeffrey Lewis, Margrett Lewis, and Nicolette Lewis at  
2 all times mentioned herein were residents of the County of Sonoma, and the State of  
3 California.

4           4.       Plaintiffs do not currently know the names of DOES 1 through 50, and  
5 therefore sue said Defendants by said fictitious names. Plaintiffs allege that each of these  
6 Defendants are in some way liable and at fault for the events and happenings referred to herein,  
7 and each is responsible for the damages incurred by Plaintiffs. Plaintiffs will amend this  
8 Complaint to allege each Defendant's true name and capacity when ascertained.

9           5.       EcoSmart sold e-NRG to Outdora for retail sale. Outdora is a California  
10 corporation with its principal place of business in Sonoma, California. On April 7, 2014,  
11 Plaintiff Margrett Lewis purchased four gallons of e-NRG from Outdora for use in her outdoor  
12 decorative fire appliance commonly referred to as a fire bowl.

13           6.       On June 8, 2014, Plaintiffs Nicolette and Alexis Lewis were using the fire bowl  
14 at their house in Sonoma, California, to heat marshmallows with their two best friends to make  
15 s'mores when they thought the fire was out and that the fire bowl needed to be refilled.  
16 Plaintiff Alexis Lewis was in the process of re-fueling the fire bowl with a one-gallon fuel  
17 container of e-NRG when vapors from the fuel container ignited causing an explosive  
18 discharge of ethanol fuel and fire, igniting her twin sister Nicolette Lewis. The flames fully  
19 engulfed Nicolette Lewis causing severe third degree burns to her face, neck, chest, arms, legs  
20 and feet. As Plaintiffs Jeffrey Lewis and Margrett Lewis rushed out of the house in response  
21 to Plaintiff Nicolette Lewis' blood curdling screams they saw their daughter fully engulfed in  
22 flames. As Plaintiff Margrett Lewis and Jeffrey Lewis attempted to put out the flames on  
23 Plaintiff Nicolette Lewis, and the area around her, they suffered burn injuries.

24           7.       Plaintiff Nicolette Lewis suffered 27 percent total body burns with third degree  
25 burns to her face, neck, chest, arms, legs and feet, and was hospitalized for 30 days at Shriner's  
26 Hospital with life threatening injuries. As a result of massive burn scars, Plaintiff Nicolette  
27 Lewis had to undergo split thickness skin grafting and skin grafts were taken from 32 percent  
28



PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ LLP

1 of her body that was not burned. Plaintiff developed skin contractures and keloid scarring  
2 which interfered with normal body function, resulting in over twenty surgical procedures, over  
3 twenty laser treatments, hyperbaric oxygen therapy, leach therapy and multiple debridements  
4 causing severe pain and emotional distress.

5 8. Plaintiff Alexis Lewis, Margrett Lewis and Jeffrey Lewis suffered burn  
6 injuries and severe emotional distress, including post-traumatic stress disorder, depression and  
7 anxiety which has and will continue to affect their mental and physical health.

8 9. The fuel container used in one gallon fuel containers was defective in design for  
9 lack of a flame arrestor. A flame arrestor is a simple wire or plastic mesh that fits in the neck  
10 of the fuel container and prevents flames from entering the container, thus preventing the  
11 discharge of flaming ethanol fuel. EcoSmart was aware of the need to modify their fuel  
12 containers to include flame arrestors prior to the sale of e-NRG to Plaintiff Margrett Lewis and  
13 after the subject accident equipped all ethanol fuel containers sold under the name e-NRG with  
14 flame arrestors.

15 10. EcoSmart was served with a Summons and Complaint by Plaintiffs in an action  
16 filed in the Sonoma County Superior Court entitled *Lewis v. EcoSmart, et al.*, Case No. SCV-  
17 256907 alleging product defect, negligence and negligent infliction of emotional distress.

#### 18 **FIRST CAUSE OF ACTION**

##### 19 **(Direct Action under Insurance Code Section 11580)**

20 11. Plaintiffs incorporate by reference each of the allegations set forth in paragraphs 1  
21 to 10 above.

22 12. Liberty Mutual issued a policy of insurance covering EcoSmart, Policy No.  
23 ME-CAS-12-438176, covering negligence and product defects resulting in bodily injury with a  
24 coverage period of April 30, 2013, to April 30, 2014. The policy was renewed on April 30,  
25 2014, with coverage to April 30, 2015, under Policy No. SY-CAS-13-438176. Coverage  
26 under the policy period commencing April 30, 2014, substantially reduced coverage limits and  
27 included claims made provision without providing 60 days notice as required under California  
28

1 law.

2 13. Liberty Mutual declined to provide a defense and indemnification in *Lewis v.*  
3 *EcoSmart, et al.*, Case No. SCV-256907 because the claim was filed after June 30, 2014, and  
4 the accident occurred on June 8, 2014.

5 14. Plaintiffs allege that Liberty Policy No. ME-CAS- 12-438176 was in full force  
6 and effect on June 8, 2014, and provided full coverage for the injuries and damages suffered by  
7 Plaintiffs because the terms of coverage was substantially reduced or excluded without Liberty  
8 Mutual giving EcoSmart the notice required by California Insurance Code section 677.2. Due to  
9 the failure of Liberty Mutual to give notice to EcoSmart, Policy ME-CAS-12-438176 coverage  
10 was extended by 60 days or until June 30, 2014, pursuant to California Insurance Code section  
11 678.1. The extended coverage under Insurance Code section 678.1 provides coverage for the  
12 injuries and damages suffered by Plaintiffs.

13 15. On or about November 8, 2015, EcoSmart filed for bankruptcy protection in  
14 U.S. Federal Bankruptcy Court, California Central, Case No. 2:15bk27139 due to the lawsuit  
15 filed by Plaintiffs in Sonoma County due to the denial of coverage and indemnity by Liberty  
16 Mutual as set forth above. By order of the Bankruptcy Court, Plaintiffs were allowed to  
17 proceed against EcoSmart's insurance carrier, to the extent there is coverage, but discharged  
18 EcoSmart for personal liability for debts.

19 20 16. On January 9, 2018, following testimony of experts and after review of  
21 declarations, medical records and reports, Judge Allan Hardcastle, Sonoma County Superior  
22 Court Judge, entered Judgment against EcoSmart in favor of Plaintiffs in Sonoma County  
23 Superior Court Case No. SCV-256907 for injuries and damages suffered by Plaintiffs as a result  
24 of the accident of June 8, 2014. The full amount in judgment against EcoSmart and in  
25 favor of Plaintiffs is: Nicolette Lewis, \$30,678,221.71; Alexis Lewis, \$4,095,763; Margrett  
26 Lewis, \$7,565,052; and Jeffrey Lewis, \$3,565,284. True and correct copies of the Judgments  
27 are attached as Exhibit A hereto.

28 17. Pursuant to California Insurance Code section 11580(b) (2), Plaintiffs are



1 bringing a direct action against Defendant Liberty Mutual for the injuries and damages  
 2 suffered on June 8, 2014, as set forth above. Defendant Liberty Mutual is liable for the injuries  
 3 and damages suffered by Plaintiffs due to its wrongful denial of both coverage and  
 4 defense under its policy of insurance with EcoSmart, Policy No. ME-CAS-12-438176, a copy  
 5 of which is attached as Exhibit B hereto.

6 18. Plaintiffs request a finding that Liberty Mutual Policy No. ME-CAS-12-438176  
 7 provides coverage for Plaintiffs' injuries and damages arising out of the subject accident, that  
 8 Liberty Mutual wrongfully denied coverage to EcoSmart, that Liberty Mutual wrongfully  
 9 failed to provide a defense to EcoSmart and that Liberty Mutual is obligated to pay its policy  
 10 limits to satisfy the judgments against EcoSmart and in favor of Plaintiffs as set forth above.

## 11 SECOND CAUSE OF ACTION

### 12 (Breach of Contract)

13 19. Plaintiffs incorporate by reference each of the allegations set forth in paragraphs 1  
 14 to 18 above.

15 20. The insurance policy is a contract between Defendant Liberty Mutual and  
 16 EcoSmart, wherein Liberty Mutual promises to insure EcoSmart against liability claims.

17 21. EcoSmart paid its premiums and in turn was covered by this policy so there was a  
 18 bargained for exchange.

19 22. Once Plaintiffs secured the judgments against EcoSmart they became judgment  
 20 creditors. Defendant Liberty Mutual owed duties and obligations to Plaintiffs as judgment  
 21 creditors and as third party beneficiaries under the contract.

22 23. Defendant Liberty Mutual breached this contract by failing to indemnify or defend  
 23 EcoSmart.

24 24. Defendant Liberty Mutual breached this contract by failing to provide coverage to  
 25 EcoSmart.

26 ///

27 ///

1       25. As a direct and proximate result of Defendant Liberty Mutual's conduct and breach  
2 of contractual obligations, Plaintiffs have suffered damages under the policy in an amount  
3 according to proof at trial.


4       WHEREFORE, Plaintiffs pray for judgment as follows:

- 5       1. Full payment of the Judgments entered against EcoSmart in Sonoma County  
6       Superior Court Case No. SCV-256907 in favor of Plaintiffs;  
7       2. Interest from the date of judgment;  
8       3. For costs of suit; and  
9       4. Such other relief as the Court determines is just and proper.

11                   PERRY, JOHNSON, ANDERSON,  
12                   MILLER & MOSKOWITZ, LLP

13       DATED: January 23, 2018

14       By: \_\_\_\_\_

15                     
16                   LESLIE R. PERRY  
17                   Attorneys for Plaintiffs  
18                   NICOLETTE LEWIS, ALEXIS LEWIS,  
19                   MARGRETT LEWIS and JEFFREY  
20                   LEWIS

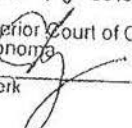
PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ LLP



# EXHIBIT A



JUD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address) William D. Anderson, SBN 53071 Perry, Johnson, Anderson, Miller & Moskowitz, LLP 438 First Street, 4th Floor Santa Rosa, CA 95401 TELEPHONE NO.: (707) 525-8800 FAX NO. (Optional): (707) 545-8242 E-MAIL ADDRESS (Optional): anderson@perryllaw.net ATTORNEY FOR (Name): Plaintiffs MARGRETT LEWIS, et al. SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA STREET ADDRESS: 3055 Cleveland Avenue MAILING ADDRESS: Department 19 CITY AND ZIP CODE: Santa Rosa, CA 95403 BRANCH NAME: Unlimited Civil Case PLAINTIFF: MARGRETT LEWIS, et al. DEFENDANT: ECOSMART, INC., et al.		FOR COURT USE ONLY <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div> <div style="text-align: center;">JAN 09 2018</div> <div style="text-align: center;">Clerk of Superior Court of California, County of Sonoma</div> <div style="text-align: center;">By  Deputy Clerk</div>
JUDGMENT <input type="checkbox"/> By Clerk <input checked="" type="checkbox"/> By Default <input type="checkbox"/> After Court Trial <input checked="" type="checkbox"/> By Court <input type="checkbox"/> On Stipulation <input type="checkbox"/> Defendant Did Not Appear at Trial		CASE NUMBER: SCV-256907

## JUDGMENT

1. ☒ BY DEFAULT
  - a. Defendant was properly served with a copy of the summons and complaint.
  - b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
  - c. Defendant's default was entered by the clerk upon plaintiff's application.
  - d. ☐ Clerk's Judgment (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
  - e. ☒ Court Judgment (Code Civ. Proc., § 585(b)). The court considered
    - (1) ☒ plaintiff's testimony and other evidence.
    - (2) ☐ Plaintiff's written declaration (Code Civ. Proc., § 585(d)).
2. ☐ ON STIPULATION
  - a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
  - b. ☐ the signed written stipulation was filed in the case.
  - c. ☐ the stipulation was stated in open court    ☐ the stipulation was stated on the record.
3. ☒ AFTER COURT TRIAL. The jury was waived. The court considered the evidence.
  - a. The case was tried on (date and time): ~~January 9, 2017, 9:00 A.M.~~ *April January 9, 2018, 8:30 a.m.*  
before (name of judicial officer): Hon. Allan D. Hardcastle
  - b. Appearances by:
 

<input checked="" type="checkbox"/> Plaintiff (name each): (1) MARGRETT LEWIS (2) JEFFREY LEWIS <input type="checkbox"/> Continued on Attachment 3b. <input type="checkbox"/> Defendant (name each): (1) (2) <input type="checkbox"/> Continued on Attachment 3b.	<input checked="" type="checkbox"/> Plaintiff's attorney (name each): (1) WILLIAM D. ANDERSON (2) HEATHER-ANN YOUNG <input type="checkbox"/> Defendant's attorney (name each): (1) / (2)
--	---
  - c. ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
  - d. ☐ A statement of decision (Code Civ. Proc., § 632) ☐ was not ☐ was requested.

Page 1 of 2

PLAINTIFF: MARGRETT LEWIS, et al.	CASE NUMBER: SCV-256907
DEFENDANT: ECOSMART, INC., et al.	

JUDGMENT IS ENTERED AS FOLLOWS BY: ☒ THE COURT ☐ THE CLERK4. ☐ Stipulated Judgment. Judgment is entered according to the stipulation of the parties.

5. Parties. Judgment is

a. ☒ for plaintiff (name each):  
NICOLETTE LEWISc. ☐ for cross-complainant (name each):and against defendant (names):  
ECOSMART, INC.

and against cross-defendant (name each):

☐ Continued on Attachment 5a.☐ Continued on Attachment 5c.b. ☐ for defendant (name each):d. ☐ for cross-defendant (name each):

6. Amount.

a. ☒ Defendant named in item 5a above must pay plaintiff on the complaint:c. ☐ Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1) <input checked="" type="checkbox"/> Damages	\$	30,550,622.00
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$	
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input checked="" type="checkbox"/> Costs	\$	127,544.71
(5) <input type="checkbox"/> Other (specify):	\$	
(6) TOTAL	\$	30,550,622.00

(1) <input type="checkbox"/> Damages	\$	
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$	
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input type="checkbox"/> Costs	\$	
(5) <input type="checkbox"/> Other (specify):	\$	
(6) TOTAL	\$	0.00

b. ☐ Plaintiff to receive nothing from defendant named in item 5b.☐ Defendant named in item 5b to recover costs \$  
☐ and attorney fees \$d. ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.☐ Cross-defendant named in item 5d to recover costs \$  
☐ and attorney fees \$7. ☒ Other (specify): See attached findings.

Date: 1/9/18

☒

ADAM D. HARGREAVE

JUDICIAL OFFICER

Date:

☐

Clerk, by \_\_\_\_\_, Deputy



## CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date: 1-9-18

Clerk, by

Christine Reynoso

Page 2 of 2

1 Attachment to JUDGMENT BY COURT:

2 Lewis v. EcoSmart

3 SCV 256907

4 Nicolette Lewis

5 FINDINGS:

6 1. Defendant ECOSMART, INC. (ECOSMART) is a California Corporation with  
7 its principal place of business 3641 Holdredge Avenue, Los Angeles, California.

8 2. ECOSMART is 90% owned by Defendant THE FIRE COMPANY, PTY, LTD  
(THE FIRE COMPANY).

9 3. ECOSMART has one director, Stephane Thomas, who is also CEO. He is also  
10 managing director and CEO of THE FIRE COMPANY.

11 4. ECOSMART was incorporated to act as a sales and distribution company for  
12 the products designed and sold by THE FIRE COMPANY.

13 5. e-NRG is denatured alcohol and is produced and bottled by Defendant  
14 CHEMISPHERE CORPORATION (CHEMISPHERE) for ECOSMART. ECOSMART then  
15 sells and distributes e-NRG throughout the U.S. and Canada.

16 6. The e-NRG product line includes one gallon HDPE fuel containers  
17 CHEMISPHERE for bottling and packaging.

18 7. Prior to July 1, 2014, e-NRG one gallon fuel containers did not have flame  
19 arrestors.

20 8. Flame arrestor technology has been in use since the late 1800s and is commonly  
21 used in industry. Flame arrestors were used by competitors of ECOSMART prior to the time  
22 ECOSMART incorporated them into their fuel containers.

23 9. Flame arrestors typically cost a few cents to manufacture.

24 10. Flame arrestors are a safety feature designed to quench flames and prevent them  
25 from entering fuel container and causing the accidental explosion of fuel and fuel vapors  
26 within the container.

27 11. Ethanol alcohol, the fuel used in e-NRG, produces vapor that is in the explosive  
28 range at room temperature.

1  
DEFAULT JUDGMENT AGAINST ECOSMART, INC. BY COURT AFTER HEARING (PLAINTIFF  
NICOLETTE LEWIS)

PERRY, JOHNSON, ANDERSON,  
MUELLER & MOSKOWITZ LLP



PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ LLP

12. e-NRG one gallon fuel containers without flame arrestors create a severe burn hazard because fuel vapors can ignite and travel back into the fuel container, igniting the fuel vapor and air in the headspace of the bottle causing an explosive discharge of flaming fuel and vapor.

13. e-NRG one gallon fuel containers manufactured prior to July 1, 2014, were not equipped with flame arrestors creating a foreseeable risk of harm and therefore are defective.

14. ECOSMART was aware of the unreasonable risk of harm their one gallon fuel containers created prior to June 8, 2014, because ECOSMART was aware of at least two other severe burn injuries suffered by consumers using e-NRG fuel containers which lacked flame arrestors.

15. In February 2014, ECOSMART hired REAX Engineering to do a fire safety analysis of its e-NRG fuel containers and REAX Engineering concluded that all e-NRG fuel containers should be equipped with flame arrestors due to the severe burn hazard caused when used in a foreseeable manner by consumers.

16. As early as 2011 Alexander Eburne, CEO of ECOSMART, was aware of the national recall of pourable gel alcohol containers that did not have flame arrestors due to the severe burn hazard created when used in a foreseeable manner by consumers.

17. ECOSMART was negligent for selling fuel containers that were not equipped with flame arrestors knowing that an explosive discharge of flaming fuel was a risk when used in a foreseeable manner by consumers.

18. ECOSMART started a national recall of its fuel containers due to lack of flame arrestors in May, 2014, but never contacted or notified Plaintiffs of the recall and the danger of using e-NRG fuel containers.

19. On April 7, 2014, Plaintiff MARGRETT LEWIS purchased four one gallon fuel containers of e-NRG from retailer Defendant OUTDORA and was not advised of the severe risk of harm she was exposing herself and her family by purchasing ethanol fuel containers which were not equipped with flame arrestors.

20. On June 8, 2014, Plaintiffs NICOLETTE LEWIS, ALEXIS LEWIS and two

PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ LLP

1 friends were cooking marshmallows over a Hampton Model 530 fire bowl sold and distributed  
2 by Defendant REAL FLAME COMPANY, INC. (REAL FLAME) when the flame appeared  
3 to die out requiring refueling.

4 21. ALEXIS LEWIS, using an approximately half full one gallon container of e-  
5 NRG, attempted to refuel the fire bowl, when burning vapor and fuel discharged in an  
6 explosion, covering NICOLETTE LEWIS in flames.

7 22. During the explosive discharge of ethanol fuel from the e-NRG fuel container,  
8 ALEXIS LEWIS suffered burn injuries to her lower extremities.

9 23. MARGRETT LEWIS, hearing horrific screams from NICOLETTE, ran out  
10 onto the front porch and in an effort to smother NICOLETTE's flames and to remove  
11 NICOLETTE'S shirt which was engulfed in flames, MARGRETT suffered severe burn  
12 injuries to both her hands and arms.

13 24. Plaintiff JEFFREY LEWIS, also hearing the screams of NICOLETTE, ran out  
14 onto the front patio and suffered burn injuries to his right leg and lower extremities as he  
15 attempted to put the flames out.

16 25. As a result of the explosion of the e-NRG fuel containers ALEXIS LEWIS  
17 suffered burn injuries to her leg.

18 26. If the one gallon fuel container of e-NRG that ALEXIS was pouring at the time  
19 of the accident had a flame arrestor, there would have been no explosive discharge and none of  
20 the Lewis family members would have been burned.

21 27. NICOLETTE LEWIS suffered burn injuries to 26% of her body and 12% of  
22 were third degree burns. The burn injuries to NICOLETTE were to her face, ear, neck, chest,  
23 abdomen, both arms, both legs and both feet. To cover the burn areas in grafts, skin from 30%  
24 of her body was harvested, including skin from her legs, torso and back.

25 28. NICOLETTE LEWIS developed severe contractures from her burns. She  
26 developed hyper pigmented and hyper vascularized scarring, called keloid scars, on both the  
27 burn sites and on the sites harvested for skin grafting such that 56% of her body and face have  
28 residual scarring. She has had 17 surgeries to remove contractures and badly damaged skin

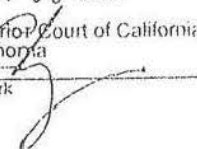
1 from her neck, arms, chest, abdomen and legs. The total medical bills for Nicolette Lewis are  
2 \$1,115,298.91 and of the total \$591,706.54 has been paid. NICOLETTE LEWIS will need to  
3 undergo surgical treatment in the future to repair both the burn sites and the areas where skin  
4 was harvested. NICOLETTE LEWIS has suffered from depression, anxiety and post-  
5 traumatic stress disorder. The present value of future surgical care, psychiatric and  
6 psychological treatment is \$8,486,251.00.

7 29. NICOLETTE LEWIS has loss of earnings and earning capacity due to her  
8 injuries in the amount of \$144,370.00.

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PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ LLP



JUD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address) William D. Anderson, SBN 53071 Perry, Johnson, Anderson, Miller & Moskowitz, LLP 438 First Street, 4th Floor Santa Rosa, CA 95401 TELEPHONE NO. (707) 525-8800 FAX NO. (Optional): (707) 545-8242 E-MAIL ADDRESS (Optional): anderson@perrylaw.net ATTORNEY FOR (Name) Plaintiffs MARGRETT LEWIS, et al. SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA STREET ADDRESS: 3055 Cleveland Avenue MAILING ADDRESS: Department 19 CITY AND ZIP CODE: Santa Rosa, CA 95403 BRANCH NAME: Unlimited Civil Case PLAINTIFF: MARGRETT LEWIS, et al. DEFENDANT: ECOSMART, INC., et al.		FOR COURT USE ONLY <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div> <div style="text-align: center;">JAN 09 2018</div> Clerk of Superior Court of California, County of Sonoma By:  Deputy Clerk
JUDGMENT <input type="checkbox"/> By Clerk <input checked="" type="checkbox"/> By Default <input type="checkbox"/> After Court Trial <input checked="" type="checkbox"/> By Court <input type="checkbox"/> On Stipulation <input type="checkbox"/> Defendant Did Not Appear at Trial		CASE NUMBER: SCV-256907

## JUDGMENT

1. ☒ BY DEFAULT
- Defendant was properly served with a copy of the summons and complaint.
  - Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
  - Defendant's default was entered by the clerk upon plaintiff's application.
  - ☐ Clerk's Judgment (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
  - ☒ Court Judgment (Code Civ. Proc., § 585(b)). The court considered
    - ☒ plaintiff's testimony and other evidence.
    - ☐ Plaintiff's written declaration (Code Civ. Proc., § 585(d)).
2. ☐ ON STIPULATION
- Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
  - ☐ the signed written stipulation was filed in the case.
  - ☐ the stipulation was stated in open court      ☐ the stipulation was stated on the record.
3. ☒ AFTER COURT TRIAL. The jury was waived. The court considered the evidence.
- The case was tried on (date and time): January 9, 2017, 9:00 A.M. <sup>Re: January 9, 2018, 8:30am.</sup>  
 before (name of judicial officer): Hon. Allan D. Hardcastle
  - Appearances by:
 

<input checked="" type="checkbox"/> Plaintiff (name each): (1) MARGRETT LEWIS (2) JEFFREY LEWIS <input type="checkbox"/> Continued on Attachment 3b. <input type="checkbox"/> Defendant (name each): (1) (2) <input type="checkbox"/> Continued on Attachment 3b.	<input checked="" type="checkbox"/> Plaintiff's attorney (name each): (1) WILLIAM D. ANDERSON (2) HEATHER-ANN YOUNG <input type="checkbox"/> Defendant's attorney (name each): (1) (2)
--	---
  - ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
  - ☐ A statement of decision (Code Civ. Proc., § 632) ☐ was not ☐ was requested.

Page 1 of 2

PLAINTIFF: MARGRETT LEWIS, et al.	CASE NUMBER: SCV-256907
DEFENDANT: ECOSMART, INC., et al.	

JUDGMENT IS ENTERED AS FOLLOWS BY: ☒ THE COURT ☐ THE CLERK4. ☐ Stipulated Judgment. Judgment is entered according to the stipulation of the parties.

5. Parties. Judgment is

a. ☒ for plaintiff (name each):  
MARGRETT LEWISc. ☐ for cross-complainant (name each):and against defendant (names):  
ECOSMART, INC.

and against cross-defendant (name each):

☐ Continued on Attachment 5a.☐ Continued on Attachment 5c.b. ☐ for defendant (name each):d. ☐ for cross-defendant (name each):

6. Amount.

a. ☒ Defendant named in item 5a above must pay plaintiff on the complaint:

(1) <input checked="" type="checkbox"/> Damages	\$	7,565,052.00
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$	
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input type="checkbox"/> Costs	\$	
(5) <input type="checkbox"/> Other (specify):	\$	
(6) TOTAL	\$	7,565,052.00

c. ☐ Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1) <input type="checkbox"/> Damages	\$	
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$	
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input type="checkbox"/> Costs	\$	
(5) <input type="checkbox"/> Other (specify):	\$	
(6) TOTAL	\$	0.00

b. ☐ Plaintiff to receive nothing from defendant named in item 5b.☐ Defendant named in item 5b to recover costs \$  
☐ and attorney fees \$d. ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.☐ Cross-defendant named in item 5d to recover costs \$  
☐ and attorney fees \$7. ☒ Other (specify): See attached findings.

Date:

1/9/18

Date:

☐

ALLAN D. BARDCASTLE

☐

Clerk, by

Deputy



## CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date:

1-9-18

Clerk, by

Christine Reynoso

Deputy

Page 2 of 2

1 Attachment to JUDGMENT BY COURT:  
 2 Lewis v. EcoSmart  
 3 SCV 256907

4 Margrett Lewis

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17 6. The e-NRG product line includes one gallon HDPE fuel containers  
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21 8. Flame arrestor technology has been in use since the late 1800s and is commonly  
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24 9. Flame arrestors typically cost a few cents to manufacture.

25 10. Flame arrestors are a safety feature designed to quench flames and prevent them  
 26 from entering fuel container and causing the accidental explosion of fuel and fuel vapors  
 27 within the container.

28 11. Ethanol alcohol, the fuel used in e-NRG, produces vapor that is in the explosive  
 range at room temperature.

PERRY, JOHNSON, ANDERSON,  
 MILLER & MOSKOWITZ LLP



FERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ LLP

12. e-NRG one gallon fuel containers without flame arrestors create a severe burn hazard because fuel vapors can ignite and travel back into the fuel container, igniting the fuel vapor and air in the headspace of the bottle causing an explosive discharge of flaming fuel and vapor.

13. e-NRG one gallon fuel containers manufactured prior to July 1, 2014, were not equipped with flame arrestors creating a foreseeable risk of harm and therefore are defective.

14. ECOSMART was aware of the unreasonable risk of harm their one gallon fuel containers created prior to June 8, 2014, because ECOSMART was aware of at least two other severe burn injuries suffered by consumers using e-NRG fuel containers which lacked flame arrestors.

15. In February 2014, ECOSMART hired REAX Engineering to do a fire safety analysis of its e-NRG fuel containers and REAX Engineering concluded that all e-NRG fuel containers should be equipped with flame arrestors due to the severe burn hazard caused when used in a foreseeable manner by consumers.

16. As early as 2011 Alexander Eburne, CEO of ECOSMART, was aware of the national recall of pourable gel alcohol containers that did not have flame arrestors due to the severe burn hazard created when used in a foreseeable manner by consumers.

17. ECOSMART was negligent for selling fuel containers that were not equipped with flame arrestors knowing that an explosive discharge of flaming fuel was a risk when used in a foreseeable manner by consumers.

18. ECOSMART started a national recall of its fuel containers due to lack of flame arrestors in May, 2014, but never contacted or notified Plaintiffs of the recall and the danger of using e-NRG fuel containers.

19. On April 7, 2014, Plaintiff MARGRETT LEWIS purchased four one gallon fuel containers of e-NRG from retailer Defendant OUTDORA and was not advised of the severe risk of harm she was exposing herself and her family by purchasing ethanol fuel containers which were not equipped with flame arrestors.

20. On June 8, 2014, Plaintiffs NICOLETTE LEWIS, ALEXIS LEWIS and two

PERRY, JOHNSON, ANDERSON,  
HILLER & MOSKOWITZ LLP

1 friends were cooking marshmallows over a Hampton Model 530 fire bowl sold and distributed  
2 by Defendant REAL FLAME COMPANY, INC. (REAL FLAME) when the flame appeared  
3 to die out requiring refueling.

4 21. ALEXIS LEWIS, using an approximately half full one gallon container of e-  
5 NRG, attempted to refuel the fire bowl, when burning vapor and fuel discharged in an  
6 explosion, covering NICOLETTE LEWIS in flames.

7 22. During the explosive discharge of ethanol fuel from the e-NRG fuel container,  
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9 23. MARGRETT LEWIS, hearing horrific screams from NICOLETTE, ran out  
10 onto the front porch and in an effort to smother NICOLETTE's flames and to remove  
11 NICOLETTE'S shirt which was engulfed in flames, MARGRETT suffered severe burn  
12 injuries to both her hands and arms.

13 24. Plaintiff JEFFREY LEWIS, also hearing the screams of NICOLETTE, ran out  
14 onto the front patio and suffered burn injuries to his right leg and lower extremities as he  
15 attempted to put the flames out.

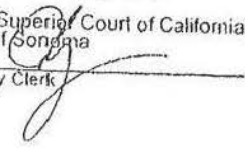
16 25. As a result of the explosion of the e-NRG fuel containers ALEXIS LEWIS  
17 suffered burn injuries to her leg.

18 26. If the one gallon fuel container of e-NRG that ALEXIS was pouring at the time  
19 of the accident had a flame arrestor, there would have been no explosive discharge and none of  
20 the Lewis family members would have been burned.

21 27. MARGRETT LEWIS has suffered post-traumatic stress disorder, severe  
22 anxiety and emotional trauma that caused physical injuries as a result of insomnia, eating  
23 disorders and mental exhaustion. The future cost of psychiatric and psychological treatment  
24 for MARGRETT LEWIS is \$66,365.20 .  
25  
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JUD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address) William D. Anderson, SBN 53071 Perry, Johnson, Anderson, Miller & Moskowitz, LLP 438 First Street, 4th Floor Santa Rosa, CA 95401 TELEPHONE NO.: (707) 525-8800 FAX NO. (Optional): (707) 545-8242 E-MAIL ADDRESS (Optional): anderson@perrylaw.net ATTORNEY FOR (Name): Plaintiffs MARGRETT LEWIS, et al.		FOR COURT USE ONLY  <div style="font-size: 2em; font-weight: bold; text-align: center;">FILED</div> <div style="text-align: center;">JAN 09 2018</div> Clerk of Superior Court of California, County of Sonoma By:  Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA STREET ADDRESS: 3055 Cleveland Avenue MAILING ADDRESS: Department 19 CITY AND ZIP CODE: Santa Rosa, CA 95403 BRANCH NAME: Unlimited Civil Case PLAINTIFF: MARGRETT LEWIS, et al. DEFENDANT: ECOSMART, INC., et al.		CASE NUMBER: SCV-256907
<div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> By Clerk  <input checked="" type="checkbox"/> By Court         </div> <div> <b>JUDGMENT</b>  <input checked="" type="checkbox"/> By Default  <input type="checkbox"/> On Stipulation         </div> <div> <input type="checkbox"/> After Court Trial  <input type="checkbox"/> Defendant Did Not Appear at Trial         </div> </div>		

## JUDGMENT

1. ☒ **BY DEFAULT**
  - a. Defendant was properly served with a copy of the summons and complaint.
  - b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
  - c. Defendant's default was entered by the clerk upon plaintiff's application.
  - d. ☐ Clerk's Judgment (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
  - e. ☒ Court Judgment (Code Civ. Proc., § 585(b)). The court considered
    - (1) ☒ plaintiff's testimony and other evidence.
    - (2) ☐ Plaintiff's written declaration (Code Civ. Proc., § 585(d)).
2. ☐ **ON STIPULATION**
  - a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
  - b. ☐ the signed written stipulation was filed in the case.
  - c. ☐ the stipulation was stated in open court ☐ the stipulation was stated on the record.
3. ☒ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
  - a. The case was tried on (date and time): January 9, 2017, 9:00 A.M. <sup>REV</sup> January 9, 2018, 8:30 a.m.  
 before (name of judicial officer): Hon. Allan D. Hardcastle
  - b. Appearances by:
 

<input checked="" type="checkbox"/> Plaintiff (name each): (1) MARGRETT LEWIS (2) JEFFREY LEWIS <input type="checkbox"/> Continued on Attachment 3b. <input type="checkbox"/> Defendant (name each): (1) (2) <input type="checkbox"/> Continued on Attachment 3b.	<input checked="" type="checkbox"/> Plaintiff's attorney (name each): (1) WILLIAM D. ANDERSON (2) HEATHER-ANN YOUNG <input type="checkbox"/> Defendant's attorney (name each): (1) (2)
--	---
  - c. ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
  - d. ☐ A statement of decision (Code Civ. Proc., § 632) ☐ was not ☐ was requested.

Page 1 of 2

PLAINTIFF: MARGRETT LEWIS, et al.	CASE NUMBER: SCV-256907
DEFENDANT: ECOSMART, INC., et al.	

JUDGMENT IS ENTERED AS FOLLOWS BY: ☒ THE COURT ☐ THE CLERK4. ☐ Stipulated Judgment. Judgment is entered according to the stipulation of the parties.

5. Parties. Judgment is

a. ☒ for plaintiff (name each):  
JEFFREY LEWISc. ☐ for cross-complainant (name each):and against defendant (names):  
ECOSMART, INC.

and against cross-defendant (name each):

☐ Continued on Attachment 5a.☐ Continued on Attachment 5c.b. ☐ for defendant (name each):d. ☐ for cross-defendant (name each):

6. Amount.

a. ☒ Defendant named in item 5a above must pay plaintiff on the complaint:c. ☐ Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1) <input checked="" type="checkbox"/> Damages	\$	3,565,284.00
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$	
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input type="checkbox"/> Costs	\$	
(5) <input type="checkbox"/> Other (specify):	\$	
(6) TOTAL	\$	3,565,284.00

(1) <input type="checkbox"/> Damages	\$	
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$	
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input type="checkbox"/> Costs	\$	
(5) <input type="checkbox"/> Other (specify):	\$	
(6) TOTAL	\$	0.00

b. ☐ Plaintiff to receive nothing from defendant named in item 5b.  
☐ Defendant named in item 5b to recover costs \$  
☐ and attorney fees \$d. ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.  
☐ Cross-defendant named in item 5d to recover costs \$  
☐ and attorney fees \$7. ☒ Other (specify): See attached findings.

Date:

1/9/18

☒

ALLAN D. WARDEN

Date:

☐

Clerk, by

Deputy



## CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date:

1-9-18

Clerk, by

Christine Reynoso

Page 2 of 2

1 Attachment to JUDGMENT BY COURT:  
 2 Lewis v. EcoSmart  
 3 SCV 256907

4 Jeffrey Lewis

5 FINDINGS:

6 1. Defendant ECOSMART, INC. (ECOSMART) is a California Corporation with  
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 9 (THE FIRE COMPANY).

10 3. ECOSMART has one director, Stephane Thomas, who is also CEO. He is also  
 11 managing director and CEO of THE FIRE COMPANY.

12 4. ECOSMART was incorporated to act as a sales and distribution company for  
 13 the products designed and sold by THE FIRE COMPANY.

14 5. e-NRG is denatured alcohol and is produced and bottled by Defendant  
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17 6. The e-NRG product line includes one gallon HDPE fuel containers  
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19 7. Prior to July 1, 2014, e-NRG one gallon fuel containers did not have flame  
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21 8. Flame arrestor technology has been in use since the late 1800s and is commonly  
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24 9. Flame arrestors typically cost a few cents to manufacture.

25 10. Flame arrestors are a safety feature designed to quench flames and prevent them  
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 27 within the container.

28 11. Ethanol alcohol, the fuel used in e-NRG, produces vapor that is in the explosive  
 range at room temperature.

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MILLER & MCKOWITZ LLP

12. e-NRG one gallon fuel containers without flame arrestors create a severe burn hazard because fuel vapors can ignite and travel back into the fuel container, igniting the fuel vapor and air in the headspace of the bottle causing an explosive discharge of flaming fuel and vapor.

13. e-NRG one gallon fuel containers manufactured prior to July 1, 2014, were not equipped with flame arrestors creating a foreseeable risk of harm and therefore are defective.

14. ECOSMART was aware of the unreasonable risk of harm their one gallon fuel containers created prior to June 8, 2014, because ECOSMART was aware of at least two other severe burn injuries suffered by consumers using e-NRG fuel containers which lacked flame arrestors.

15. In February 2014, ECOSMART hired REAX Engineering to do a fire safety analysis of its e-NRG fuel containers and REAX Engineering concluded that all e-NRG fuel containers should be equipped with flame arrestors due to the severe burn hazard caused when used in a foreseeable manner by consumers.

16. As early as 2011 Alexander Eburne, CEO of ECOSMART, was aware of the national recall of pourable gel alcohol containers that did not have flame arrestors due to the severe burn hazard created when used in a foreseeable manner by consumers.

17. ECOSMART was negligent for selling fuel containers that were not equipped with flame arrestors knowing that an explosive discharge of flaming fuel was a risk when used in a foreseeable manner by consumers.

18. ECOSMART started a national recall of its fuel containers due to lack of flame arrestors in May, 2014, but never contacted or notified Plaintiffs of the recall and the danger of using e-NRG fuel containers.

19. On April 7, 2014, Plaintiff MARGRETT LEWIS purchased four one gallon fuel containers of e-NRG from retailer Defendant OUTDORA and was not advised of the severe risk of harm she was exposing herself and her family by purchasing ethanol fuel containers which were not equipped with flame arrestors.

20. On June 8, 2014, Plaintiffs NICOLETTE LEWIS, ALEXIS LEWIS and two

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1 friends were cooking marshmallows over a Hampton Model 530 fire bowl sold and distributed  
2 by Defendant REAL FLAME COMPANY, INC. (REAL FLAME) when the flame appeared  
3 to die out requiring refueling.

4 21. ALEXIS LEWIS, using an approximately half full one gallon container of e-  
5 NRG, attempted to refuel the fire bowl, when burning vapor and fuel discharged in an  
6 explosion, covering NICOLETTE LEWIS in flames.

7 22. During the explosive discharge of ethanol fuel from the e-NRG fuel container,  
8 ALEXIS LEWIS suffered burn injuries to her lower extremities.

9 23. MARGRETT LEWIS, hearing horrific screams from NICOLETTE, ran out  
10 onto the front porch and in an effort to smother NICOLETTE's flames and to remove  
11 NICOLETTE'S shirt which was engulfed in flames, MARGRETT suffered severe burn  
12 injuries to both her hands and arms.

13 24. Plaintiff JEFFREY LEWIS, also hearing the screams of NICOLETTE, ran out  
14 onto the front patio and suffered burn injuries to his right leg and lower extremities as he  
15 attempted to put the flames out.

16 25. As a result of the explosion of the e-NRG fuel containers ALEXIS LEWIS  
17 suffered burn injuries to her leg.

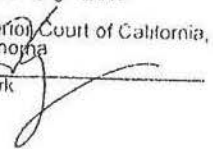
18 26. If the one gallon fuel container of e-NRG that ALEXIS was pouring at the time  
19 of the accident had a flame arrestor, there would have been no explosive discharge and none of  
20 the Lewis family members would have been burned.

21 27. NICOLETTE LEWIS suffered burn injuries to 26% of her body and 12% of  
22 were third degree burns. The burn injuries to NICOLETTE were to her face, ear, neck, chest,  
23 abdomen, both arms, both legs and both feet. To cover the burn areas in grafts, skin from 30%  
24 of her body was harvested, including skin from her legs, torso and back.

25 28. JEFFREY LEWIS has suffered post-traumatic stress disorder, severe anxiety  
26 and emotional trauma that caused physical injuries as a result of insomnia, eating disorders and  
27 mental exhaustion. The future cost of psychiatric and psychological treatment for JEFFREY  
28 LEWIS is \$66,365.20 .



JUD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address) William D. Anderson, SBN 53071 Perry, Johnson, Anderson, Miller & Moskowitz, LLP 438 First Street, 4th Floor Santa Rosa, CA 95401 TELEPHONE NO. (707) 525-8800 FAX NO. (Optional): (707) 545-8242 E-MAIL ADDRESS (Optional): anderson@perryllaw.net ATTORNEY FOR (Name): Plaintiff MARGRETT LEWIS, et al. SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA STREET ADDRESS: 3055 Cleveland Avenue MAILING ADDRESS: Department 19 CITY AND ZIP CODE: Santa Rosa, CA 95403 BRANCH NAME: Unlimited Civil Case PLAINTIFF: MARGRETT LEWIS, et al. DEFENDANT: ECOSMART, INC., et al.		FOR COURT USE ONLY <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div> <div style="text-align: center;">JAN 09 2018</div> Clerk of Superior Court of California, County of Sonoma By  Deputy Clerk
JUDGMENT <input type="checkbox"/> By Clerk <input checked="" type="checkbox"/> By Default <input type="checkbox"/> After Court Trial <input checked="" type="checkbox"/> By Court <input type="checkbox"/> On Stipulation <input type="checkbox"/> Defendant Did Not Appear at Trial		CASE NUMBER: SCV-256907

## JUDGMENT

1. ☒ BY DEFAULT
  - a. Defendant was properly served with a copy of the summons and complaint.
  - b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
  - c. Defendant's default was entered by the clerk upon plaintiff's application.
  - d. ☐ Clerk's Judgment (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
  - e. ☒ Court Judgment (Code Civ. Proc., § 585(b)). The court considered
    - (1) ☒ plaintiff's testimony and other evidence.
    - (2) ☐ Plaintiff's written declaration (Code Civ. Proc., § 585(d)).
2. ☐ ON STIPULATION
  - a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
  - b. ☐ the signed written stipulation was filed in the case.
  - c. ☐ the stipulation was stated in open court    ☐ the stipulation was stated on the record.
3. ☒ AFTER COURT TRIAL. The jury was waived. The court considered the evidence.
  - a. The case was tried on (date and time): January 9, 2018, 8:30 a.m.  
 before (name of judicial officer): Hon. Allan D. Hardcastle
  - b. Appearances by:
 

<input checked="" type="checkbox"/> Plaintiff (name each): (1) <u>MARGRETT LEWIS</u> (2) <u>JEFFREY LEWIS</u> <input type="checkbox"/> Continued on Attachment 3b. <input type="checkbox"/> Defendant (name each): (1) _____ (2) _____ <input type="checkbox"/> Continued on Attachment 3b.	<input checked="" type="checkbox"/> Plaintiff's attorney (name each): (1) <u>WILLIAM D. ANDERSON</u> (2) <u>HEATHER-ANN YOUNG</u> <input type="checkbox"/> Defendant's attorney (name each): (1) _____ (2) _____
--	---
  - c. ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
  - d. ☐ A statement of decision (Code Civ. Proc., § 632) ☐ was not ☐ was requested.

Page 1 of 2



PLAINTIFF: MARGRETT LEWIS, et al.	CASE NUMBER: SCV-256907
DEFENDANT: ECOSMART, INC., et al.	

JUDGMENT IS ENTERED AS FOLLOWS BY: ☒ THE COURT ☐ THE CLERK

4. ☐ Stipulated Judgment. Judgment is entered according to the stipulation of the parties.

5. Parties. Judgment is

a. ☒ for plaintiff (name each):  
ALEXIS LEWIS

c. ☐ for cross-complainant (name each):

and against defendant (names):  
ECOSMART, INC.

and against cross-defendant (name each):

☐ Continued on Attachment 5a.

☐ Continued on Attachment 5c.

b. ☐ for defendant (name each):

d. ☐ for cross-defendant (name each):

6. Amount.

a. ☒ Defendant named in item 5a above must pay plaintiff on the complaint:

(1) <input checked="" type="checkbox"/> Damages	\$	4,095,763.00
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$	
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input type="checkbox"/> Costs	\$	
(5) <input type="checkbox"/> Other (specify):	\$	
(6) TOTAL	\$	4,095,763.00

c. ☐ Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1) <input type="checkbox"/> Damages	\$	
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$	
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input type="checkbox"/> Costs	\$	
(5) <input type="checkbox"/> Other (specify):	\$	
(6) TOTAL	\$	0.00

b. ☐ Plaintiff to receive nothing from defendant named in item 5b.  
☐ Defendant named in item 5b to recover costs \$  
☐ and attorney fees \$

d. ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.  
☐ Cross-defendant named in item 5d to recover costs \$  
☐ and attorney fees \$

7. ☒ Other (specify): See attached findings.

Date: 1/9/18

Date:



ALAN D. HARGRAVE

☒ Clerk, by \_\_\_\_\_, Deputy



CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date: 1-9-18

Clerk, by \_\_\_\_\_, Deputy

Christine Reynoso

Page 2 of 2

1 Attachment to JUDGMENT BY COURT:  
 2 Lewis v. EcoSmart

3 Alexis Lewis

4 FINDINGS:

5 1. Defendant ECOSMART, INC. (ECOSMART) is a California Corporation with  
 6 its principal place of business 3641 Holdredge Avenue, Los Angeles, California.

7 2. ECOSMART is 90% owned by Defendant THE FIRE COMPANY, PTY, LTD  
 8 (THE FIRE COMPANY).

9 3. ECOSMART has one director, Stephane Thomas, who is also CEO. He is also  
 10 managing director and CEO of THE FIRE COMPANY.

11 4. ECOSMART was incorporated to act as a sales and distribution company for  
 12 the products designed and sold by THE FIRE COMPANY.

13 5. e-NRG is denatured alcohol and is produced and bottled by Defendant  
 14 CHEMISPHERE CORPORATION (CHEMISPHERE) for ECOSMART. ECOSMART then  
 15 sells and distributes e-NRG throughout the U.S. and Canada.

16 6. The e-NRG product line includes one gallon HDPE fuel containers  
 17 CHEMISPHERE for bottling and packaging.

18 7. Prior to July 1, 2014, e-NRG one gallon fuel containers did not have flame  
 19 arrestors.

20 8. Flame arrestor technology has been in use since the late 1800s and is commonly  
 21 used in industry. Flame arrestors were used by competitors of ECOSMART prior to the time  
 22 ECOSMART incorporated them into their fuel containers.

23 9. Flame arrestors typically cost a few cents to manufacture.

24 10. Flame arrestors are a safety feature designed to quench flames and prevent them  
 25 from entering fuel container and causing the accidental explosion of fuel and fuel vapors  
 26 within the container.

27 11. Ethanol alcohol, the fuel used in e-NRG, produces vapor that is in the explosive  
 28 range at room temperature.

PERRY, JOHNSON, ANDERSON,  
 MILLER & MOSKOWITZ, LP

PERRY, JOHNSON, ANDERSON,  
HILLER & MOSKOWITZ LLP

12. e-NRG one gallon fuel containers without flame arrestors create a severe burn hazard because fuel vapors can ignite and travel back into the fuel container, igniting the fuel vapor and air in the headspace of the bottle causing an explosive discharge of flaming fuel and vapor.

13. e-NRG one gallon fuel containers manufactured prior to July 1, 2014, were not equipped with flame arrestors creating a foreseeable risk of harm and therefore are defective.

14. ECOSMART was aware of the unreasonable risk of harm their one gallon fuel containers created prior to June 8, 2014, because ECOSMART was aware of at least two other severe burn injuries suffered by consumers using e-NRG fuel containers which lacked flame arrestors.

15. In February 2014, ECOSMART hired REAX Engineering to do a fire safety analysis of its e-NRG fuel containers and REAX Engineering concluded that all e-NRG fuel containers should be equipped with flame arrestors due to the severe burn hazard caused when used in a foreseeable manner by consumers.

16. As early as 2011 Alexander Eburne, CEO of ECOSMART, was aware of the national recall of pourable gel alcohol containers that did not have flame arrestors due to the severe burn hazard created when used in a foreseeable manner by consumers.

17. ECOSMART was negligent for selling fuel containers that were not equipped with flame arrestors knowing that an explosive discharge of flaming fuel was a risk when used in a foreseeable manner by consumers.

18. ECOSMART started a national recall of its fuel containers due to lack of flame arrestors in May, 2014, but never contacted or notified Plaintiffs of the recall and the danger of using e-NRG fuel containers.

19. On April 7, 2014, Plaintiff MARGRETT LEWIS purchased four one gallon fuel containers of e-NRG from retailer Defendant OUTDORA and was not advised of the severe risk of harm she was exposing herself and her family by purchasing ethanol fuel containers which were not equipped with flame arrestors.

20. On June 8, 2014, Plaintiffs NICOLETTE LEWIS, ALEXIS LEWIS and two



PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ, LLP

1 friends were cooking marshmallows over a Hampton Model 530 fire bowl sold and distributed  
2 by Defendant REAL FLAME COMPANY, INC. (REAL FLAME) when the flame appeared  
3 to die out requiring refueling.

4 21. ALEXIS LEWIS, using an approximately half full one gallon container of e-  
5 NRG, attempted to refuel the fire bowl, when burning vapor and fuel discharged in an  
6 explosion, covering NICOLETTE LEWIS in flames.

7 22. During the explosive discharge of ethanol fuel from the e-NRG fuel container,  
8 ALEXIS LEWIS suffered burn injuries to her lower extremities.

9 23. MARGRETT LEWIS, hearing horrific screams from NICOLETTE, ran out  
10 onto the front porch and in an effort to smother NICOLETTE's flames and to remove  
11 NICOLETTE'S shirt which was engulfed in flames, MARGRETT suffered severe burn  
12 injuries to both her hands and arms.

13 24. Plaintiff JEFFREY LEWIS, also hearing the screams of NICOLETTE, ran out  
14 onto the front patio and suffered burn injuries to his right leg and lower extremities as he  
15 attempted to put the flames out.

16 25. As a result of the explosion of the e-NRG fuel containers ALEXIS LEWIS  
17 suffered burn injuries to her leg.

18 26. If the one gallon fuel container of e-NRG that ALEXIS was pouring at the time  
19 of the accident had a flame arrestor, there would have been no explosive discharge and none of  
20 the Lewis family members would have been burned.

21 27. ALEXIS LEWIS has suffered from depression, anxiety and post-traumatic  
22 stress disorder. ALEXIS LEWIS suffered physical injury from her post-traumatic stress  
23 disorder resulting in severe loss of weight, sleep disorder and anxiety. The total medical bills  
24 for ALEXIS LEWIS are \$11,031.64 and of the total \$9,482.54 have been paid. The future  
25 treatment costs of psychiatric and psychological treatment for ALEXIS LEWIS is \$84,731.

26  
27  
28



# **EXHIBIT B**



**Liberty International Underwriters**

**Combined General & Products Liability Policy**



**Liberty**  
International  
Underwriters





### Policy Schedule

1. POLICY NUMBER:	ME-CAS-12-438176
2. INSURED:	The Fire Company Pty Ltd and EcoSmart Inc
3. PERIOD OF INSURANCE:	From: 30 <sup>th</sup> April 2013 at 4pm local standard time To: 30 <sup>th</sup> April 2014 at 4pm local standard time
4. INSURED'S BUSINESS:	Design, manufacture, distribution, retailer, wholesale and importer of ethanol fire places, burners and accessories.
5. LIMIT OF INDEMNITY:	AUD20,000,000 any one Occurrence in respect of public liability and in the aggregate during the Period of Insurance in respect of Product liability.
6. DEDUCTIBLES:	AUD10,000 each and every Occurrence (costs inclusive).  AUD25,000 each and every Occurrence (costs inclusive) for losses in North America
7. POLICY WORDING:	LIU Combined General & Products Liability Policy form LIU-AUS-CAS-CGL-2000001 and attached endorsements.
8. PREMIUM:	AUD86,000 (minimum and non-adjustable) plus charges.

This Schedule attaches to and forms part of LIU Combined General & Products Liability Policy Form LIU-AUS-CAS-CGL-2000001 and is valid only if it is signed and dated below by a person duly authorised by Liberty International Underwriters.



For and on behalf of  
Liberty International Underwriters

3<sup>rd</sup> May 2013

Date



## Combined General & Products Liability Policy

In consideration of the premium being paid by the Insured to LIU and in reliance upon the written statements and declarations contained in the proposal or insurance broker's quotation submission, LIU agrees to indemnify the Insured in accordance with the attached Schedule, Policy wording and endorsements where applicable.

### 1 Insuring Clause

Subject to the terms of this Policy, LIU will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation in respect of Injury and/or Damage first happening during the Period of Insurance as a result of an Occurrence in connection with the Insured's Business.

### 2 Definitions

- 2.1 "Asbestos" means:
  - 2.1.1 That group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite; or
  - 2.1.2 That group of man made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres,

And includes Asbestos Products and Products containing Asbestos.
- 2.2 "Damage" means:
  - 2.2.1 Physical damage to or destruction of tangible property including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical damage that caused it; or
  - 2.2.2 Loss of use of tangible property that is not physically damaged or destroyed provided such loss of use is caused by physical damage to other tangible property which first happened during the Period of Insurance. All such loss of use shall be deemed to happen at the time of the physical damage or destruction that caused it.
- 2.3 "Employment Practices" means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, unfair contracts, harassment or discrimination (sexual or otherwise) in respect of employment by the Insured.
- 2.4 "Injury" means:
  - 2.4.1 Bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
  - 2.4.2 False arrest, wrongful detention or imprisonment, malicious prosecution;
  - 2.4.3 Wrongful entry or eviction;



- 2.4.4 Assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing Injury and/or Damage or eliminating danger, or
- 2.4.5 Libel, slander, defamation of character or invasion of right of privacy.
- 2.5 "Insured" wherever used in this Policy means the Insured named in the Schedule and:
  - 2.5.1 Any subsidiary company of the Insured incorporated within Australia including subsidiaries thereof; or
  - 2.5.2 Any other entity incorporated within Australia controlled by the Insured and over which the Insured assumes active management.
- 2.6 "Insured's Business" is the business shown in the Schedule.
- 2.7 "LIU" means Liberty International Underwriters. Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, USA (The liability of members is limited).
- 2.8 "Limit of Indemnity" means the amount stated in the Schedule pursuant to Clause 5 of this Policy.
- 2.9 "Occurrence" means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Injury and/or Damage neither expected nor intended from the standpoint of the Insured. All events of a series consequent on or attributable to one source or original cause shall be deemed one Occurrence.
- 2.10 "Period of Insurance" is the period shown in the Policy.
- 2.11 "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, cinders, dust, odours, noise, acids, alkalis, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 2.12 "Product" means any commodity, article or thing (after it has ceased to be in the possession or under the control of the Insured) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the Insured or by others trading under the name of the Insured (including any container thereof other than a motor vehicle).
- 2.13 "Terrorism" means an act or acts:
  - 2.13.1 That are violent in nature or are dangerous to human life:
    - 2.13.1.1 That are a violation of the criminal laws of the United States of America or Australia or of any State or Territory of the United States of America or Australia or that would be a criminal violation if committed within the jurisdiction of the United States of America or Australia or any State or Territory of the United States of America or Australia and that have the apparent intent of:
      - 2.13.1.1.1 Intimidating or coercing any civilian population;
      - 2.13.1.1.2 Influencing the policy of any government by intimidation or coercion; or





2.13.1.1.3 Affecting the conduct of any government by mass destruction, assassination or kidnapping.

Or

2.13.2 That result in:

2.13.2.1 The denial of access to or services from web sites, computer networks or telecommunication equipment; or

2.13.2.2 The malfunction or degradation of web sites, computer networks, telecommunications equipment, mechanical equipment or the interruption to the functioning of web sites or such properties,

And that have the apparent intent of intimidating or coercing any civilian population or influencing the policy of any government by intimidation or coercion.

2.14 "Worker" means any person employed by the Insured or deemed to be employed by the Insured whether pursuant to any Workers' Compensation Law or otherwise.

2.15 "Workers' Compensation Law" means any law relating to compensation for injury to Workers or employees.

### 3 Indemnity to Others

Subject to the terms of this Policy and in accordance with Insuring Clause 1, this Policy will extend to pay to or on behalf of:

3.1 Any principal, in respect of that principal's vicarious liability for the negligent acts or omissions of the Insured pursuant to Definition 2.5 and arising out of the Insured's Business, but this Policy does not extend to the liability of any principal howsoever arising out of the negligence, breach of contract or breach of duty of such principal;

3.2 Any director, executive officer or Worker of the Insured or, where the Insured is a partnership, any partner of the Insured, but only while acting within the scope of their duties in such capacity;

3.3 The officers, committee and members of the Insured's canteen, social, sports, first aid/medical, fire fighting and employee welfare organisations in their respective capacity as such; or

3.4 The legal personal representative of any person entitled to indemnity under this Clause 3 in circumstances giving rise to indemnity under this Policy.

Provided always that all such persons or parties shall, whilst not being a party to this contract, observe, fulfil and be subject to the terms of this Policy in so far as they can apply as though they were the Insured.

### 4 Cross Liabilities

Subject at all times to the terms of this Policy, each person or party indemnified is separately indemnified in respect of claims made by any of them against any other of them provided that LIU's total liability shall not exceed the Limit of Indemnity for all claims under this Policy



## 5 Limit of Indemnity

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LIU's liability to pay compensation shall not exceed the sum stated in the Schedule in respect of any one claim or series of claims arising from one Occurrence.

The total aggregate liability of LIU for any one Period of Insurance for all claims in respect of or in any way connected with the Insured's Products shall not exceed the Limit of Indemnity stated in the Schedule.

## 6 Defence Costs

---

In addition to the Limit of Indemnity, LIU will pay all reasonable legal costs and/or expenses incurred with LIU's prior written consent in connection with any claim for which the Insured is indemnified by this Policy.

Provided that LIU shall not be liable for legal costs and/or expenses where indemnity is not provided by this Policy.

Provided that LIU shall not be liable for legal costs and/or expenses for or in respect of representation at any formal legal inquiry involving an accident resulting in Injury or at any coroner's inquiry or defending any proceedings in a court of summary jurisdiction.

Provided that LIU shall not pay any legal costs and/or expenses in respect of any Occurrence after LIU has paid compensation up to the Limit of Indemnity.

Provided further that the legal costs and/or expenses incurred in connection with claims made and/or actions instituted within the United States of America or Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries, shall form part of the Limit of Indemnity and will not be payable by LIU in addition to the Limit of Indemnity.

In the event the Insured is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this Policy, the Insured and LIU will use their best efforts to agree upon a fair and proper allocation of legal costs and/or expenses or any other amount insured under this Policy which relate solely to what is covered under this Policy.

In the event that an agreement cannot be reached, a Senior Counsel (to be mutually agreed upon by LIU and the Insured) shall, as an expert and not an arbitrator, determine a fair and proper allocation. Until the Senior Counsel has made a determination LIU may, in its absolute discretion, pay such legal costs and/or expenses or any other amount insured under this Policy as it considers appropriate.

## 7 Exclusions

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This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

7.1 The ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the Insured of any motor vehicle or trailer which is required by law to be registered or in respect of which there is required by law to be in force a policy of compulsory liability insurance or in relation to which there existed a statutory scheme providing compensation for Injury, but this exclusion does not apply to:

7.1.1 Injury for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law;



- 7.1.2 Injury caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law;
- 7.1.3 Damage caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;
- 7.1.4 Damage to any bridge, weighbridge or road, or anything beneath such bridge, weighbridge or road caused by the weight of any motor vehicle or trailer or of the load carried thereon; or
- 7.1.5 Damage to any motor vehicle or trailer (not owned, leased or hired by, under hire purchase, on loan or rented to the Insured) temporarily in the Insured's custody or control for the purpose of parking and directly arising out of such parking.
- 7.2 Damage to property owned, leased, hired by, under hire purchase, on loan or rented to the Insured or otherwise in the Insured's care, custody or control other than:
  - 7.2.1 Premises (or to contents thereof) temporarily occupied by the Insured for the purpose of carrying out works thereto or thereon, but no indemnity is granted for liability in respect of physical damage to or destruction of that part of any premises or contents on which the Insured is or has been working on if the physical damage or destruction arises from such work;
  - 7.2.2 Premises tenanted by the Insured;
  - 7.2.3 Directors', employees' and visitors' clothing and personal effects; or
  - 7.2.4 Other property not owned by the Insured but temporarily in the Insured's possession provided:
    - 7.2.4.1 No indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which the Insured is or has been working on if the physical damage or destruction arises from such work; and
    - 7.2.4.2 LIL's limit of liability under this Clause 7.2.4 does not exceed AUD100,000 each and every Occurrence and in the aggregate for any one Period of Insurance.

Provided further that no indemnity is granted under this Policy in respect of liability assumed by the Insured under any contract or agreement which requires the Insured to effect material damage insurance on premises, property or goods not owned by the Insured.
- 7.3 Damages claimed for, and/or the costs of withdrawal, recall, inspection, repair, replacement, disposal or loss of use of the Insured's Products or of any property of which such Products form a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.
- 7.4 Damage to the Insured's Products if such Damage is attributable to any defect therein or harmful nature or unsuitability thereof.
- 7.5 The cost of performing, completing, correcting or improving any work undertaken by the Insured.





- 7.6 Any Product guarantee or warranty given by or on behalf of the Insured but this exclusion shall not apply to the requirements of any Federal or State legislation with respect to Product safety and information.
- 7.7 Liability assumed under the terms of a contract, agreement or warranty unless and only to the extent that the Insured would have been liable in the absence of such contract, agreement or warranty.
- 7.8 Liability assumed where the Insured may have been able to recover from another party but for an agreement between the Insured and such party where the Insured has waived, released or abandoned any right of recourse or recovery against any party.
- 7.9 Any Product which is incorporated into the structure, machinery or controls of any aircraft, aerial device, watercraft or hovercraft.
- 7.10 Injury to any Worker.  
 Provided that if the Insured:
  - 7.10.1 Is required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited in amount or not) for such Injury; or
  - 7.10.2 Is not required to so insure or otherwise fund such liability by reason only that the Injury is to a person who is not a Worker or "employee" within the meaning of the relevant Workers' Compensation Law or the Injury is not an Injury which is subject to such Law,
 Then this Policy will respond to the extent that the Insured's liability would not be covered under any such fund, scheme, policy of insurance or self insurance arrangement had the Insured complied with it's obligations pursuant to such Law.
- 7.11 7.11.1 Any Workers' Compensation Law;
  - 7.11.2 The provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination; or
  - 7.11.3 Employment Practices.
- 7.12 Libel, slander and/or other defamation:
  - 7.12.1 Made prior to the commencement of the Period of Insurance;
  - 7.12.2 Made at the Insured's direction or with the Insured's authority or with knowledge of its falsity; or
  - 7.12.3 Related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the Insured.
- 7.13 The loss of use of tangible property which has not been physically damaged or destroyed resulting from:
  - 7.13.1 A delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or



7.13.2 The failure of any Product to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured but this exclusion does not apply to loss of use of other tangible property directly or indirectly caused by, arising out of or in any way connected with or resulting from the sudden and accidental physical damage to or destruction of the Product after such Product has been put to use by any person or organisation other than the Insured.

7.14 Any change in the nature of the Insured's Business which

7.14.1 Occurred during the currency of this Policy, and

7.14.2 Was known by the Insured, or would have been known by a reasonable person in the circumstances, to be likely to increase the risk of Injury or Damage for which indemnity is provided by this Policy.

For the purposes of this exclusion, where the Insured is a corporate body, the knowledge of any director or officer of the Insured shall be deemed to be the knowledge of the Insured.

7.15 The rendering of or failure to render professional advice or service or any error or omission connected therewith given for a fee by the Insured or any person covered by Clause 3 of this Policy.

Provided that this exclusion does not apply to the rendering of first aid or medical services on the Insured's premises by medical persons employed by the Insured.

7.16 7.16.1 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;

7.16.2 Testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect;

7.16.3 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others; or

7.16.4 Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants.

Provided always that exclusions 7.16.1, 7.16.2 and 7.16.3 shall not apply to liability which is directly caused by a sudden, accidental, instantaneous, unintended, identifiable and unexpected happening which takes place in its entirety at a specific time and place.

The total aggregate liability of LIU for all claims covered in any one Period of Insurance in respect of the proviso above shall not exceed the Limit of Indemnity shown in the Schedule

7.17 Injury sustained due to the inhalation or ingestion of, or exposure to:

7.17.1 Tobacco or tobacco smoke; or

7.17.2 Any ingredient or additive present in any articles, items or goods which contain or include tobacco.

7.18 7.18.1 Ionising radiations or contamination from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self sustaining process of nuclear fission or fusion; or



7.18.2 Nuclear weapons material.

7.19 And regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

7.19.1 War and military action which includes without limitation the following:

7.19.1.1 War, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;

7.19.1.2 Warlike action by military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

7.19.1.3 Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

7.19.2 Any actual or threatened act of domestic or international Terrorism committed by a person or persons acting:

7.19.2.1 Alone or on behalf of or in connection with any organisation; or

7.19.2.2 With the goal of furthering any political, social, religious, ideological or similar objective.

7.19.3 Action taken to prevent or defend against an act of Terrorism.

If an act of Terrorism involves chemical or biological weapons, this Terrorism exclusion will still apply.

If an act of Terrorism involves nuclear reaction, nuclear radiation or radioactive contamination, this Terrorism exclusion will apply to liabilities that result from such nuclear reaction or nuclear radiation or radioactive contamination in place of Exclusion 7.18.

7.20 The ownership, maintenance, operation, possession or use by or on behalf of the Insured of:

7.20.1 Any aircraft or aerial device;

7.20.2 Any watercraft exceeding 10 metres in length; or

7.20.3 Any hovercraft.

7.21 The Deductible and/or self insured retention shown in the Schedule.

7.22 The erection, demolition, alteration of and/or addition to buildings by or on behalf of the Insured except for contracts not exceeding in cost the sum of AUD500,000 or 10% of the Limit of Indemnity whichever is the lesser.

7.23 Asbestos.

7.24 7.24.1 Claims made and actions instituted within the United States of America or Canada and their respective territories and protectorates, and any other territory coming within the jurisdiction of the courts of the United States of America or Canada; or





- 7.24.2 Claims and actions to which the laws of the United States of America or Canada and their respective territories and protectorates apply.

Provided that this exclusion does not apply to claims and actions caused by an employee of the Insured who normally resides in Australia while such employee is temporarily travelling on behalf of the Insured outside Australia.

- 7.25 Fines, penalties, punitive damages, exemplary damages, multiplication of compensatory damages, liquidated damages and/or aggravated damages.
- 7.26 Any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of the Insured or any person covered by Clause 3 of this Policy.

## 8 General Conditions

- 8.1 The Insured shall give written notice to LIU as soon as possible of any claim under this Policy and shall give all such additional information as LIU may require.
- 8.2 No admission, offer, promise, or payment shall be made or given by or on behalf of the Insured without the prior written consent of LIU who shall be entitled but not obligated to take over the conduct in the name of the Insured of the defence or settlement of any claim or to prosecute in the name of the Insured for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as LIU shall require.
- 8.3 This Policy and any endorsements attached to this Policy shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.
- 8.4 The amount shown within the Schedule as a Deductible and/or self insured retention is the first amount for all claims arising out of any one Occurrence which is to be borne by the Insured or any person covered by Clause 3 of this Policy.
- 8.5 LIU may at any time discharge its total liability to the Insured in respect of any one claim or series of claims arising from one Occurrence by paying to or on behalf of the Insured:
- 8.5.1 The total amount in respect of such claim to which the Insured is entitled to indemnity under this Policy;
- 8.5.2 The total amount sought by the claimant for such claim; or
- 8.5.3 The total amount for which such claim can be settled,

And in addition to such payment LIU will pay Defence Costs incurred up to the date of payment as provided for by Clause 6 of this Policy.

Upon such payment, LIU shall relinquish conduct or control of such claim and be under no further liability under this Policy in connection with such claim including but not limited to Defence Costs.

- 8.6 This Policy shall be interpreted in accordance with the laws of Australia and all claims for indemnity under this Policy shall be decided in accordance with those laws. All matters arising from or relating to the construction, operation or interpretation of the Policy shall be submitted to the exclusive jurisdiction of the Australian Courts.



8.7 The Insured must:

- 8.7.1 Exercise reasonable care that only competent Workers and/or employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
- 8.7.2 Take all reasonable precautions to:
  - 8.7.2.1 Prevent Injury and Damage;
  - 8.7.2.2 Prevent the manufacture, sale or supply of defective Products; and
  - 8.7.2.3 Comply and ensure that its Workers, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property;
- 8.7.3 At its own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect; and
- 8.7.4 Assist and co-operate fully and promptly with LIU in the investigation, settlement or defence of any claim or matters relating or in connection thereto.

The amount of any benefit under this Policy for any liability caused or contributed to by the lack of such precautions, measures and compliances shall be reduced by the amount that fairly represents the extent to which LIU's interests have been prejudiced thereby.

- 8.8 Where the premium is provisionally based on the Insured's estimates, the Insured shall keep accurate records and after expiry of the Period of Insurance declare as soon as possible such details as LIU requires and the premium shall be adjusted and any difference paid by or allowed to the Insured as the case may be subject to any minimum premium that may apply.

- 8.9 The Insured may cancel this Policy at any time by giving notice in writing to LIU.

LIU may cancel this Policy at any time where:

- 8.9.1 It is entitled to do so pursuant to the *Insurance Contracts Act 1984* or any amendments thereto;
- 8.9.2 The Insured has failed to notify LIU of any specific act or omission where such notification is required under the terms or conditions of this Policy; or
- 8.9.3 The Insured has acted in contravention of or omitted to act in compliance with any term of this Policy which empowers LIU to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by LIU shall take effect either at the time when another contract of insurance between the Insured and LIU or some other insurer (being a contract that is intended by the Insured to replace this Policy) is entered into or at 4pm on the 3rd business day after the date on which notice was given to the Insured by LIU, whichever is the earlier.



Where the Insured comprises more than one person or company, it is agreed that the Insured referred to in the Schedule shall be the agent of each of the other Insured persons or companies or others indemnified by Clause 3 for the purposes of receiving any notice of cancellation pursuant to this General Condition, or any other notice, statement, document or information relating to this Policy.

Where the Insured has a broker, nothing shall restrict LIU's right to notify the broker as agent of the Insured.

- 8.10 Notwithstanding anything else to the contrary in the Policy, whenever coverage provided by this Policy would be in violation of any applicable economic, trade or other sanction or law, such coverage shall be null and void and LIU has no obligation to pay a claim if to do so would breach that sanction or law.
- 8.11 8.11.1 Words importing persons shall include corporations and other legal entities;  
 8.11.2 References in the singular shall be deemed to include the plural and vice versa;  
 8.11.3 Words depicting any gender include reference to all other genders;  
 8.11.4 References to any legislation or subordinate instruments shall refer to such legislation or subordinate instruments as amended from time to time and in force; and  
 8.11.5 Headings have been included for ease of reference and it is understood and agreed that this Policy is not to be construed or interpreted by reference to such headings.
- 8.12 Each Insured agrees that LIU may issue by electronic mail or post any notices required to be given under the Insurance Contracts Act or otherwise.
- 8.13 Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company ("LMIC"), a stock insurance company incorporated in Massachusetts USA. LMIC is an indirect subsidiary of Liberty Mutual Holding Company Inc. ("LMHC"), a Massachusetts USA mutual holding company. NOTICE IS HEREBY GIVEN that the annual meeting of LMHC is held on the second Wednesday in April of each year at ten o'clock in the morning, local time, at LMHC's office at 175 Berkeley Street, Boston, Massachusetts USA. This notice is for members of LMHC only. One becomes a member of LMHC by virtue of being a policyholder of LMIC. Membership rights terminate when one ceases to be a policyholder of LMIC. Members of LMHC may request a copy of LMHC's annual financial statements, which are posted on Liberty Mutual's website at [www.libertymutual.com](http://www.libertymutual.com) by writing to Liberty Mutual Holding Company Inc., 175 Berkeley Street, Boston, Massachusetts 02116.

Signed on behalf of Liberty International Underwriters



For and on behalf of  
 Liberty International Underwriters

3<sup>rd</sup> May 2013

Date





Endorsements attaching to and forming part of Policy Number ME-CAS-12-438176

Insured: The Fire Company Pty Ltd and EcoSmart Inc

Endorsements effective from: 30<sup>th</sup> April 2013

Endorsement 1.

USA – Canada (incl. Domiciled Operations & Jurisdiction)

The following amendments are made to this Policy in respect of the Insured's operations and the Insured's Products exported by the Insured to the United States of America or Canada:

1. In respect to the Insured's operations domiciled in the United States of America or Canada only and Products exported to the United States of America or Canada, Exclusion 7.16 is deleted and replaced by the following:

- |      |        |  |
|------|--------|--|
| 7.16 | 7.16.1 | The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;   |
|      | 7.16.2 | Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;  |
|      | 7.16.3 | Testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect;   |
|      | 7.16.4 | The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others. |

2. Exclusion 7.24 is deleted.

Endorsement 2.

Vendors Liability

1. Clause 3 Indemnity to Others, is extended to include the following:

- 3.5 Any person or organisation designated below in the Schedule of Vendors (herein referred to as "Vendor") but only with respect to the distribution or sale of the Insured's Products provided always that the Vendor shall observe, fulfill and be subject to the terms, conditions, limitations and exclusions of this Policy in so far as they can apply as though they were the Insured.

This endorsement does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

1. Any warranty given by the Vendor;
2. Any liability assumed by the Vendor under contract or agreement which would not have attached in the absence of such contract or agreement;
3. The distribution or sale for a purpose unauthorised by the Insured;
4. Any act, error or omission of the Vendor which changes the condition of any Product;
5. The failure by the Vendor to maintain any Product in merchantable condition.



6. Any failure to make such inspections, adjustments, tests or servicing as the Vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of any Product;
7. Any Product which after distribution or sale by the Insured has been labelled, relabelled, packaged, repackaged or replaced by the Vendor;
8. Any Product which after distribution or sale by the Insured is used as a container, part or ingredient of any other product, thing or substance by or for the Vendor;
9. The demonstration, assembly, installation, servicing or repair of any Product by the Vendor;
10. Any injury or Damage happening within the Vendor's premises;
11. The liability of any person or organisation from whom the Insured has acquired any Product or any ingredient or part contained in or forming part of such Product or container accompanying or containing such Product; or
12. Any Product design, formula or specification supplied by the Vendor.

2. Schedule Of Vendors

Name  
Room and Board Inc.

Address  
4600 Olson Memorial Hwy Frontage Road  
Minneapolis, MN 55422 USA

Nothing contained in these endorsements shall in any way serve to increase the Limit of Indemnity stated in the Schedule.

Other than as amended above, the terms of this Policy shall continue to apply.



For and on behalf of  
Liberty International Underwriters

3<sup>rd</sup> May 2013

Date

Case No. SCV261819  
01-26-2018

Proof of Service of First Amended  
Summons and First Amended Complaint  
(Liberty Mutual Insurance Company)



POS-010

<b>ATTORNEY OR PARTY WITHOUT ATTORNEY:</b> Leslie Perry (062390) Perry, Johnson, Anderson, Miller & Moskowitz, LLP 438 First Street 4th Floor Santa Rosa, CA 95401  TELEPHONE NO.: (707) 525-8800 ATTORNEY FOR: Plaintiff	<b>FOR COURT USE ONLY</b>  <h1 style="text-align: center;">FILED</h1>  <b>JAN 26 2018</b>  Clerk of the Superior Court of California County of Sonoma By <u>LB</u> Deputy Clerk
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA</b> STREET ADDRESS: 600 Administration Drive MAILING ADDRESS: CITY AND ZIP CODE: Santa Rosa, 95403 BRANCH NAME: Hall of Justice	
PLAINTIFF: Nicolette Lewis; et al. DEFENDANT: Liberty Mutual Insurance Company; et al.	<b>CASE NUMBER:</b> SCV-261819
<b>PROOF OF SERVICE OF SUMMONS</b>	Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
  - a. ☐ summons
  - b. ☐ complaint
  - c. ☐ Alternative Dispute Resolution (ADR) package
  - d. ☒ Civil Case Cover Sheet (served in complex cases only)
  - e. ☐ cross-complaint
  - f. ☒ other (specify documents):  
 First Amended Summons; First Amended Complaint; Notice of Assignment to One Judge for All Purposes, Notice of Case Management Conference, and Order to Show Cause
3. a. Party served (specify name of party as shown on documents served):  
 Liberty Mutual Insurance Company
  - b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made)  
 Mai Yang / Designated to Accept Service
4. Address where the party was served:  
 CSC Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833
5. I served the party (check proper box)
  - a. ☒ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 01/24/2018 (2) at (time): 1:25 PM
  - b. ☐ **by substituted service.** On (date): \_\_\_\_\_ at (time): \_\_\_\_\_ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):  
    - (1) ☐ **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - (2) ☐ **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
    - (3) ☐ **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
    - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where copies were left (Code Civ. Proc., 415.20). I mailed the documents on (date): \_\_\_\_\_ from (city): \_\_\_\_\_ or ☐

a declaration of mailing is attached.

Page 1 of 2

PLAINTIFF: Nicolette Lewis; et al. DEFENDANT: Liberty Mutual Insurance Company; et al.	CASE NUMBER: SCV-261819
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- c. ☐ (5) ☐ I attached a declaration of diligence stating actions taken first to attempt personal service. **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgement of Receipt* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgement of Receipt*.) (Code Civ. Proc., 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., 415.40.)
- d. ☐ **by other means** (specify means of service and authorizing code section):
- ☐ Additional page describing service is attached.
6. The "Notice to the Person Served" (on the summons) was completed as follows:
- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☒ On behalf of (specify): Liberty Mutual Insurance Company
- under the following Code of Civil Procedure section:
- |   |   |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation)          | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 416.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input type="checkbox"/> 416.50 (public entity)                   | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other:                                       |
7. **Person who served papers**
- a. Name: Demian Ross  
Firm: TriStar Attorney Service
- b. Address: 725 Farmers Lane, #6, Santa Rosa, CA 95405
- c. Telephone number: (707) 578-8458
- d. The fee for the service was: \$ 250.00 RUSH/TIME
- e. I am:
- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☒ a registered California process server:
- (i) ☐ owner ☐ employee ☒ independent contractor.
- (ii) Registration No.: RPS #2011-66
- (iii) County: Sacramento
8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- or
9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 1/24/2018

Demian Ross

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

(SIGNATURE)

Electronic Signature as Allowed by California Civil Code 1633.7

2018 JAN 26 PM 1 27



Case No. SCV261819  
02-02-2018

Proof of Service of First Amended  
Summons and First Amended Complaint  
(Liberty International Underwriters)

POS-010

<b>ATTORNEY OR PARTY WITHOUT ATTORNEY:</b> Leslie Perry (062390) Perry, Johnson, Anderson, Miller & Moskowitz, LLP 438 First Street 4th Floor Santa Rosa, CA 95401  TELEPHONE NO.: (707) 525-8800 ATTORNEY FOR: Plaintiff	<b>FOR COURT USE ONLY</b>  <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div> <div style="text-align: center; font-weight: bold;">FEB - 2 2018</div>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA</b> STREET ADDRESS: 600 Administration Drive MAILING ADDRESS: CITY AND ZIP CODE: Santa Rosa, 95403 BRANCH NAME: Hall of Justice	SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA BY <u>MB</u> DEPUTY CLERK
PLAINTIFF: Nicolette Lewis; et al. DEFENDANT: Liberty Mutual Insurance Company; et al.	CASE NUMBER: SCV-261819
<b>PROOF OF SERVICE OF SUMMONS</b>	Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
  - a. ☐ summons
  - b. ☐ complaint
  - c. ☐ Alternative Dispute Resolution (ADR) package
  - d. ☒ Civil Case Cover Sheet (served in complex cases only)
  - e. ☐ cross-complaint
  - f. ☒ other (specify documents):  
 First Amended Summons; First Amended Complaint; Notice of Assignment to One Judge for All Purposes, Notice of Case Management Conference, and Order to Show Cause
3. a. Party served (specify name of party as shown on documents served):  
 Liberty International Underwriters
  - b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made)  
 Jeanne Zhen / Designated to Accept Service
4. Address where the party was served:  
 CSC Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833
5. I served the party (check proper box)
  - a. ☒ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 01/29/2018 (2) at (time): 1:15 PM
  - b. ☐ **by substituted service.** On (date): \_\_\_\_\_ at (time): \_\_\_\_\_ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):  
    - (1) ☐ **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - (2) ☐ **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
    - (3) ☐ **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
    - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where copies were left (Code Civ. Proc., 415.20). I mailed the documents on (date): \_\_\_\_\_ from (city): \_\_\_\_\_ or ☐

a declaration of mailing is attached.

Page 1 of 2

PLAINTIFF: Nicolette Lewis; et al. DEFENDANT: Liberty Mutual Insurance Company; et al.	CASE NUMBER: SCV-261819
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- c. ☐ (5) ☐ I attached a **declaration of diligence** stating actions taken first to attempt personal service. **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgement of Receipt* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgement of Receipt*.) (Code Civ. Proc., 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., 415.40.)
- d. ☐ **by other means (specify means of service and authorizing code section):**
- ☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☒ On behalf of (specify): Liberty International Underwriters

under the following Code of Civil Procedure section:

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation)          | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 416.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input type="checkbox"/> 416.50 (public entity)                   | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other:                                       |

7. **Person who served papers**

- a. Name: Demian Ross  
Firm: TriStar Attorney Service
- b. Address: 725 Farmers Lane, #6, Santa Rosa, CA 95405
- c. Telephone number: (707) 578-8458
- d. The fee for the service was: \$ 150.00 (mileage/copies)
- e. I am:
- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☒ a registered California process server:
- (i) ☐ owner ☐ employee ☒ independent contractor.
- (ii) Registration No.: RPS #2011-66
- (iii) County: Sacramento

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

9. ☐ or  
☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 1/29/2018

Demian Ross

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

  
(SIGNATURE)

Electronic Signature as Allowed by California Civil Code 1633.7



2018 FEB 2 PM 1 12

Case No. SCV261819  
02-05-2018

Discovery Served on Liberty Mutual  
Insurance Company



## Notice of Service of Process

Transmittal Number: 17729291  
Date Processed: 02/06/2018

**Primary Contact:** Bruce Buttaro  
Liberty Mutual Insurance Company  
175 Berkeley Street  
Boston, MA 02116

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<b>Entity:</b>	Liberty Mutual Insurance Company Entity ID Number 1765547
<b>Entity Served:</b>	Liberty Mutual Insurance Company
<b>Title of Action:</b>	Nicolette Lewis vs. Liberty Mutual Insurance Company
<b>Document(s) Type:</b>	Interrogatories
<b>Nature of Action:</b>	Contract
<b>Court/Agency:</b>	Sonoma County Superior Court, California
<b>Case/Reference No:</b>	261819
<b>Jurisdiction Served:</b>	California
<b>Date Served on CSC:</b>	02/05/2018
<b>Answer or Appearance Due:</b>	30 Days
<b>Originally Served On:</b>	CSC
<b>How Served:</b>	Personal Service
<b>Sender Information:</b>	Heather-Ann T. Young 707-525-8800

---

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

**To avoid potential delay, please do not send your response to CSC**

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | [sop@cscglobal.com](mailto:sop@cscglobal.com)



1 LESLIE R. PERRY (SBN 062390)  
JOHN J. JOHNSON (SBN 114902)  
2 HEATHER-ANN T. YOUNG (SBN 283211)  
PERRY, JOHNSON, ANDERSON,  
3 MILLER & MOSKOWITZ, LLP  
438 First Street, Fourth Floor  
4 Santa Rosa, CA 95401  
Telephone: (707) 525-8800  
5 Facsimile: (707) 545-8242

6 Attorney for Plaintiffs  
MARGRETT LEWIS, NICOLETTE LEWIS,  
7 ALEXIS LEWIS, and JEFFREY LEWIS

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SONOMA

10 NICOLETTE LEWIS, ALEXIS LEWIS,  
MARGRETT LEWIS; and JEFFREY LEWIS

CASE No. 261819

Unlimited Civil Action

12 Plaintiff(s).

**PLAINTIFF NICOLETTE LEWIS'  
DECLARATION FOR ADDITIONAL  
DISCOVERY**

13 vs.

14 LIBERTY MUTUAL INSURANCE COMPANY,  
15 LIBERTY INTERNATIONAL UNDERWRITERS,  
and DOES 1 through 50, inclusive,

Department: 16  
Judge: Hon. Patrick Broderick  
Trial Date: not yet set

16 Defendant(s).

20 I, HEATHER-ANN T. YOUNG, declare:

22 1. I am one of the attorneys for Plaintiffs in this action. The following is true of my  
23 personal knowledge and if called as a witness I would competently testify thereto.

24 2. I am propounding to Defendant LIBERTY MUTUAL INSURANCE COMPANY,  
25 the set of Special Interrogatories, Set One served herewith.

26 3. This set of Special Interrogatories will cause the total number of requests  
27 propounded to the party to whom they are directed to exceed the number of requests permitted by  
28 Section 2030.030 of the Civil Code Procedure.

1           4. I have not propounded previous sets of Special Interrogatories. This set contains  
2 71 Special Interrogatories. Form Interrogatories Set One is being served with these Special  
3 Interrogatories.

4           5. I am familiar with the issues and the previous discovery conducted by all the  
5 parties in this case.

6           6. I have personally examined the interrogatories in this set.

7           7. This number of Special Interrogatories is warranted under Section 2030.010 of the  
8 Civil Code of Procedure because of the complexity of this litigation and the numerous factual  
9 issues related to the underlying case. These interrogatories are needed to determine a liability  
10 analysis and uncover key factual questions.

11           8. None of the interrogatories is being propounded for any improper purpose, such as  
12 to harass the party, or the attorney for the party, to whom it is directed, or to cause unnecessary  
13 delay or needless increase in the cost of litigation.

14           I declare under penalty and perjury under the laws of California that the foregoing is true  
15 and correct. Executed this 1st day of February, 2018.

16  
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26  
27  
28



HEATHER-ANN T. YOUNG  
Attorney for Plaintiffs

Case No. SCV261819  
02-05-2018

Form Interrogatories Served on Liberty  
Mutual Insurance Company



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): — Leslie R. Perry 062390 Perry, Johnson, Anderson, Miller & Mosk 438 First Street, 4th Floor Santa Rosa, CA 95401 TELEPHONE NO.: (707) 525-8800 FAX NO. (Optional): (707) 545-8242 E-MAIL ADDRESS (Optional): perry@perryllaw.net ATTORNEY FOR (Name): Plaintiffs	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sonoma	
SHORT TITLE OF CASE: Lewis v. Liberty Mutual Insurance Company	
<b>FORM INTERROGATORIES-GENERAL</b>  Asking Party: Plaintiff Nicolette Lewis  Answering Party: Defn Liberty Mutual Insurance Company Set No.: One	CASE NUMBER: SCV 261819

**Sec. 1. Instructions to All Parties**

(a) Interrogatories are written questions prepared by a party to an action that are sent to any other party in the action to be answered under oath. The interrogatories below are form interrogatories approved for use in civil cases.

(b) For time limitations, requirements for service on other parties, and other details, see Code of Civil Procedure sections 2030.010-2030.410 and the cases construing those sections.

(c) These form interrogatories do not change existing law relating to interrogatories nor do they affect an answering party's right to assert any privilege or make any objection.

**Sec. 2. Instructions to the Asking Party**

(a) These interrogatories are designed for optional use by parties in unlimited civil cases where the amount demanded exceeds \$25,000. Separate interrogatories, *Form Interrogatories - Limited Civil Cases (Economic Litigation)* (form DISC-004), which have no subparts, are designed for use in limited civil cases where the amount demanded is \$25,000 or less; however, those interrogatories may also be used in unlimited civil cases.

(b) Check the box next to each interrogatory that you want the answering party to answer. Use care in choosing those interrogatories that are applicable to the case.

(c) You may insert your own definition of **INCIDENT** in Section 4, but only where the action arises from a course of conduct or a series of events occurring over a period of time.

(d) The interrogatories in section 16.0, Defendant's Contentions-Personal Injury, should not be used until the defendant has had a reasonable opportunity to conduct an investigation or discovery of plaintiff's injuries and damages.

(e) Additional interrogatories may be attached.

**Sec. 3. Instructions to the Answering Party**

(a) An answer or other appropriate response must be given to each interrogatory checked by the asking party.

(b) As a general rule, within 30 days after you are served with these interrogatories, you must serve your responses on all the asking party and serve copies of your responses on all other parties to the action who have appeared. See Code of Civil Procedure sections 2030.260-2030.270 for details.

(c) Each answer must be as complete and straightforward as the information reasonably available to you, including the information possessed by your attorneys or agents, permits. If an interrogatory cannot be answered completely, answer it to the extent possible.

(d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.

(e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.

(f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.

(g) If you are asserting a privilege or making an objection to an interrogatory, you must specifically assert the privilege or state the objection in your written response.

(h) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers:

*I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.*

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(SIGNATURE)

**Sec. 4. Definitions**

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

(a) (Check one of the following):

- ☐ (1) **INCIDENT** includes the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding.



- ☐ (2) **INCIDENT** means (insert your definition here or on a separate, attached sheet labeled "Sec. 4(a)(2)"): \_\_\_\_\_

(b) **YOU OR ANYONE ACTING ON YOUR BEHALF** includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

(c) **PERSON** includes a natural person, firm, association, organization, partnership, business, trust, limited liability company, corporation, or public entity.

(d) **DOCUMENT** means a writing, as defined in Evidence Code section 250, and includes the original or a copy of handwriting, typewriting, printing, photostats, photographs, electronically stored information, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

(e) **HEALTH CARE PROVIDER** includes any **PERSON** referred to in Code of Civil Procedure section 667.7(e)(3).

(f) **ADDRESS** means the street address, including the city, state, and zip code.

#### Sec. 5. Interrogatories

The following interrogatories have been approved by the Judicial Council under Code of Civil Procedure section 2033.710:

#### CONTENTS

- 1.0 Identity of Persons Answering These Interrogatories
- 2.0 General Background Information - Individual
- 3.0 General Background Information - Business Entity
- 4.0 Insurance
- 5.0 [Reserved]
- 6.0 Physical, Mental, or Emotional Injuries
- 7.0 Property Damage
- 8.0 Loss of Income or Earning Capacity
- 9.0 Other Damages
- 10.0 Medical History
- 11.0 Other Claims and Previous Claims
- 12.0 Investigation - General
- 13.0 Investigation - Surveillance
- 14.0 Statutory or Regulatory Violations
- 15.0 Denials and Special or Affirmative Defenses
- 16.0 Defendant's Contentions Personal Injury
- 17.0 Responses to Request for Admissions
- 18.0 [Reserved]
- 19.0 [Reserved]
- 20.0 How the Incident Occurred - Motor Vehicle
- 25.0 [Reserved]
- 30.0 [Reserved]
- 40.0 [Reserved]
- 50.0 Contract
- 60.0 [Reserved]
- 70.0 Unlawful Detainer [See separate form DISC-003]
- 101.0 Economic Litigation [See separate form DISC-004]
- 200.0 Employment Law [See separate form DISC-002]
- Family Law [See separate form FL-145]

#### 1.0 Identity of Persons Answering These Interrogatories

- ☒ 1.1 State the name, **ADDRESS**, telephone number, and relationship to you of each **PERSON** who prepared or assisted in the preparation of the responses to these interrogatories. (Do not identify anyone who simply typed or reproduced the responses.)

#### 2.0 General Background Information - individual

- ☐ 2.1 State:
- (a) your name;
  - (b) every name you have used in the past; and
  - (c) the dates you used each name.
- ☐ 2.2 State the date and place of your birth.
- ☐ 2.3 At the time of the **INCIDENT**, did you have a driver's license? If so state:
- (a) the state or other issuing entity;
  - (b) the license number and type;
  - (c) the date of issuance; and
  - (d) all restrictions.
- ☐ 2.4 At the time of the **INCIDENT**, did you have any other permit or license for the operation of a motor vehicle? If so, state:
- (a) the state or other issuing entity;
  - (b) the license number and type;
  - (c) the date of issuance; and
  - (d) all restrictions.
- ☐ 2.5 State:
- (a) your present residence **ADDRESS**;
  - (b) your residence **ADDRESSES** for the past five years; and
  - (c) the dates you lived at each **ADDRESS**.
- ☐ 2.6 State:
- (a) the name, **ADDRESS**, and telephone number of your present employer or place of self-employment; and
  - (b) the name, **ADDRESS**, dates of employment, job title, and nature of work for each employer or self-employment you have had from five years before the **INCIDENT** until today.
- ☐ 2.7 State:
- (a) the name and **ADDRESS** of each school or other academic or vocational institution you have attended, beginning with high school;
  - (b) the dates you attended;
  - (c) the highest grade level you have completed; and
  - (d) the degrees received.
- ☐ 2.8 Have you ever been convicted of a felony? If so, for each conviction state:
- (a) the city and state where you were convicted;
  - (b) the date of conviction;
  - (c) the offense; and
  - (d) the court and case number.
- ☐ 2.9 Can you speak English with ease? If not, what language and dialect do you normally use?
- ☐ 2.10 Can you read and write English with ease? If not, what language and dialect do you normally use?



- ☐ 2.11 At the time of the **INCIDENT** were you acting as an agent or employee for any **PERSON**? If so, state:
- (a) the name, **ADDRESS**, and telephone number of that **PERSON**; and
  - (b) a description of your duties.
- ☐ 2.12 At the time of the **INCIDENT** did you or any other person have any physical, emotional, or mental disability or condition that may have contributed to the occurrence of the **INCIDENT**? If so, for each person state:
- (a) the name, **ADDRESS**, and telephone number;
  - (b) the nature of the disability or condition; and
  - (c) the manner in which the disability or condition contributed to the occurrence of the **INCIDENT**.
- ☐ 2.13 Within 24 hours before the **INCIDENT** did you or any person involved in the **INCIDENT** use or take any of the following substances: alcoholic beverage, marijuana, or other drug or medication of any kind (prescription or not)? If so, for each person state:
- (a) the name, **ADDRESS**, and telephone number;
  - (b) the nature or description of each substance;
  - (c) the quantity of each substance used or taken;
  - (d) the date and time of day when each substance was used or taken;
  - (e) the **ADDRESS** where each substance was used or taken;
  - (f) the name, **ADDRESS**, and telephone number of each person who was present when each substance was used or taken; and
  - (g) the name, **ADDRESS**, and telephone number of any **HEALTH CARE PROVIDER** who prescribed or furnished the substance and the condition for which it was prescribed or furnished.

### 3.0 General Background Information - Business Entity

- ☒ 3.1 Are you a corporation? If so, state:
- (a) the name stated in the current articles of incorporation;
  - (b) all other names used by the corporation during the past 10 years and the dates each was used;
  - (c) the date and place of incorporation;
  - (d) the **ADDRESS** of the principal place of business; and
  - (e) whether you are qualified to do business in California.
- ☒ 3.2 Are you a partnership? If so, state:
- (a) the current partnership name;
  - (b) all other names used by the partnership during the past 10 years and the dates each was used;
  - (c) whether you are a limited partnership and, if so, under the laws of what jurisdiction;
  - (d) the name and **ADDRESS** of each general partner; and
  - (e) the **ADDRESS** of the principal place of business.
- ☒ 3.3 Are you a limited liability company? If so, state:
- (a) the name stated in the current articles of organization;
  - (b) all other names used by the company during the past 10 years and the date each was used;
  - (c) the date and place of filing of the articles of organization;
  - (d) the **ADDRESS** of the principal place of business; and
  - (e) whether you are qualified to do business in California.

- ☒ 3.4 Are you a joint venture? If so, state:
- (a) the current joint venture name;
  - (b) all other names used by the joint venture during the past 10 years and the dates each was used;
  - (c) the name and **ADDRESS** of each joint venture; and
  - (d) the **ADDRESS** of the principal place of business.
- ☒ 3.5 Are you an unincorporated association? If so, state:
- (a) the current unincorporated association name;
  - (b) all other names used by the unincorporated association during the past 10 years and the dates each was used; and
  - (c) the **ADDRESS** of the principal place of business.
- ☒ 3.6 Have you done business under a fictitious name during the past 10 years? If so, for each fictitious name state:
- (a) the name;
  - (b) the dates each was used;
  - (c) the state and county of each fictitious name filing; and
  - (d) the **ADDRESS** of the principal place of business.
- ☒ 3.7 Within the past five years has any public entity registered or licensed your business? If so, for each license or registration:
- (a) identify the license or registration;
  - (b) state the name of the public entity; and
  - (c) state the dates of issuance and expiration.

### 4.0 Insurance

- ☐ 4.1 At the time of the **INCIDENT**, was there in effect any policy of insurance through which you were or might be insured in any manner (for example, primary, pro-rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the **INCIDENT**? If so, for each policy state:
- (a) the kind of coverage;
  - (b) the name and **ADDRESS** of the insurance company;
  - (c) the name, **ADDRESS**, and telephone number of each named insured;
  - (d) the policy number;
  - (e) the limits of coverage for each type of coverage contained in the policy;
  - (f) whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company; and
  - (g) the name, **ADDRESS**, and telephone number of the custodian of the policy.
- ☐ 4.2 Are you self-insured under any statute for the damages, claims, or actions that have arisen out of the **INCIDENT**? If so, specify the statute.

### 5.0 [Reserved]

### 6.0 Physical, Mental, or Emotional Injuries

- ☐ 6.1 Do you attribute any physical, mental, or emotional injuries to the **INCIDENT**? (If your answer is "no," do not answer interrogatories 6.2 through 6.7).
- ☐ 6.2 Identify each injury you attribute to the **INCIDENT** and the area of your body affected.



- ☐ 6.3 Do you still have any complaints that you attribute to the **INCIDENT**? If so, for each complaint state:
- (a) a description;
  - (b) whether the complaint is subsiding, remaining the same, or becoming worse; and
  - (c) the frequency and duration.
- ☐ 6.4 Did you receive any consultation or examination (except from expert witnesses covered by Code of Civil Procedure sections 2034.210-2034.310) or treatment from a **HEALTH CARE PROVIDER** for any injury you attribute to the **INCIDENT**? If so, for each **HEALTH CARE PROVIDER** state:
- (a) the name, **ADDRESS**, and telephone number;
  - (b) the type of consultation, examination, or treatment provided;
  - (c) the dates you received consultation, examination, or treatment; and
  - (d) the charges to date.
- ☐ 6.5 Have you taken any medication, prescribed or not, as a result of injuries that you attribute to the **INCIDENT**? If so, for each medication state:
- (a) the name;
  - (b) the **PERSON** who prescribed or furnished it;
  - (c) the date it was prescribed or furnished;
  - (d) the dates you began and stopped taking it; and
  - (e) the cost to date.
- ☐ 6.6 Are there any other medical services necessitated by the injuries that you attribute to the **INCIDENT** that were not previously listed (for example, ambulance, nursing, prosthetics)? If so, for each service state:
- (a) the nature;
  - (b) the date;
  - (c) the cost; and
  - (d) the name, **ADDRESS**, and telephone number of each provider.
- ☐ 6.7 Has any **HEALTH CARE PROVIDER** advised that you may require future or additional treatment for any injuries that you attribute to the **INCIDENT**? If so, for each injury state:
- (a) the name and **ADDRESS** of each **HEALTH CARE PROVIDER**;
  - (b) the complaints for which the treatment was advised; and
  - (c) the nature, duration, and estimated cost of the treatment.

#### 7.0 Property Damage

- ☐ 7.1 Do you attribute any loss of or damage to a vehicle or other property to the **INCIDENT**? If so, for each item of property:
- (a) describe the property;
  - (b) describe the nature and location of the damage to the property;

- (c) state the amount of damage you are claiming for each item of property and how the amount was calculated; and
- (d) if the property was sold, state the name, **ADDRESS**, and telephone number of the seller, the date of sale, and the sale price.

- ☐ 7.2 Has a written estimate or evaluation been made for any item of property referred to in your answer to the preceding interrogatory? If so, for each estimate or evaluation state:
- (a) the name, **ADDRESS**, and telephone number of the **PERSON** who prepared it and the date prepared;
  - (b) the name, **ADDRESS**, and telephone number of each **PERSON** who has a copy of it; and
  - (c) the amount of damage stated.
- ☐ 7.3 Has any item of property referred to in your answer to interrogatory 7.1 been repaired? If so, for each item state:
- (a) the date repaired;
  - (b) a description of the repair;
  - (c) the repair cost;
  - (d) the name, **ADDRESS**, and telephone number of the **PERSON** who repaired it;
  - (e) the name, **ADDRESS**, and telephone number of the **PERSON** who paid for the repair.

#### 8.0 Loss of Income or Earning Capacity

- ☐ 8.1 Do you attribute any loss of income or earning capacity to the **INCIDENT**? (If your answer is "no," do not answer interrogatories 8.2 through 8.8).
- ☐ 8.2 State:
- (a) the nature of your work;
  - (b) your job title at the time of the **INCIDENT**; and
  - (c) the date your employment began.
- ☐ 8.3 State the last date before the **INCIDENT** that you worked for compensation.
- ☐ 8.4 State your monthly income at the time of the **INCIDENT** and how the amount was calculated.
- ☐ 8.5 State the date you returned to work at each place of employment following the **INCIDENT**.
- ☐ 8.6 State the dates you did not work and for which you lost income as a result of the **INCIDENT**.
- ☐ 8.7 State the total income you have lost to date as a result of the **INCIDENT** and how the amount was calculated.
- ☐ 8.8 Will you lose income in the future as a result of the **INCIDENT**? If so, state:
- (a) the facts upon which you base this contention;
  - (b) an estimate of the amount;
  - (c) an estimate of how long you will be unable to work; and
  - (d) how the claim for future income is calculated.

**9.0 Other Damages**

☐ 9.1 Are there any other damages that you attribute to the **INCIDENT**? If so, for each item of damage state:

- (a) the nature;
- (b) the date it occurred;
- (c) the amount; and
- (d) the name, **ADDRESS**, and telephone number of each **PERSON** to whom an obligation was incurred.

☐ 9.2 Do any **DOCUMENTS** support the existence or amount of any item of damages claimed in interrogatory 9.1? If so, describe each document and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

**10.0 Medical History**

☐ 10.1 At any time before the **INCIDENT** did you have complaints or injuries that involved the same part of your body claimed to have been injured in the **INCIDENT**? If so, for each state:

- (a) a description of the complaint or injury;
- (b) the dates it began and ended; and
- (c) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER** whom you consulted or who examined or treated you.

☐ 10.2 List all physical, mental, and emotional disabilities you had immediately before the **INCIDENT**. *(You may omit mental or emotional disabilities unless you attribute any mental or emotional injury to the **INCIDENT**.)*

☐ 10.3 At any time after the **INCIDENT**, did you sustain injuries of the kind for which you are now claiming damages? If so, for each incident giving rise to an injury state:

- (a) the date and the place it occurred;
- (b) the name, **ADDRESS**, and telephone number of any other **PERSON** involved;
- (c) the nature of any injuries you sustained;
- (d) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER** who you consulted or who examined or treated you; and
- (e) the nature of the treatment and its duration.

**11.0 Other Claims and Previous Claims**

☐ 11.1 Except for this action, in the past 10 years have you filed an action or made a written claim or demand for compensation for your personal injuries? If so, for each action, claim, or demand state:

- (a) the date, time, and place and location (closest street **ADDRESS** or intersection) of the **INCIDENT** giving rise to the action, claim, or demand;
- (b) the name, **ADDRESS**, and telephone number of each **PERSON** against whom the claim or demand was made or the action filed;

- (c) the court, names of the parties, and case number of any action filed;
- (d) the name, **ADDRESS**, and telephone number of any attorney representing you;
- (e) whether the claim or action has been resolved or is pending; and
- (f) a description of the injury.

☐ 11.2 In the past 10 years have you made a written claim or demand for workers' compensation benefits? If so, for each claim or demand state:

- (a) the date, time, and place of the **INCIDENT** giving rise to the claim;
- (b) the name, **ADDRESS**, and telephone number of your employer at the time of the injury;
- (c) the name, **ADDRESS**, and telephone number of the workers' compensation insurer and the claim number;
- (d) the period of time during which you received workers' compensation benefits;
- (e) a description of the injury;
- (f) the name, **ADDRESS**, and telephone number of any **HEALTH CARE PROVIDER** who provided services; and
- (g) the case number at the Workers' Compensation Appeals Board.

**12.0 Investigation-General**

☐ 12.1 State the name, **ADDRESS**, and telephone number of each individual:

- (a) who witnessed the **INCIDENT** or the events occurring immediately before or after the **INCIDENT**;
- (b) who made any statement at the scene of the **INCIDENT**;
- (c) who heard any statements made about the **INCIDENT** by any individual at the scene; and
- (d) who **YOU OR ANYONE ACTING ON YOUR BEHALF** claim has knowledge of the **INCIDENT** (except for expert witnesses covered by Code of Civil Procedure section 2034).

☐ 12.2 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** interviewed any individual concerning the **INCIDENT**? If so, for each individual state:

- (a) the name, **ADDRESS**, and telephone number of the individual interviewed;
- (b) the date of the interview; and
- (c) the name, **ADDRESS**, and telephone number of the **PERSON** who conducted the interview.

☐ 12.3 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** obtained a written or recorded statement from any individual concerning the **INCIDENT**? If so, for each statement state:

- (a) the name, **ADDRESS**, and telephone number of the individual from whom the statement was obtained;
- (b) the name, **ADDRESS**, and telephone number of the individual who obtained the statement;
- (c) the date the statement was obtained; and
- (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original statement or a copy.



- ☐ 12.4 Do YOU OR ANYONE ACTING ON YOUR BEHALF know of any photographs, films, or videotapes depicting any place, object, or individual concerning the INCIDENT or plaintiff's injuries? If so, state:
- (a) the number of photographs or feet of film or videotape;
  - (b) the places, objects, or persons photographed, filmed, or videotaped;
  - (c) the date the photographs, films, or videotapes were taken;
  - (d) the name, ADDRESS, and telephone number of the individual taking the photographs, films, or videotapes; and
  - (e) the name, ADDRESS, and telephone number of each PERSON who has the original or a copy of the photographs, films, or videotapes.

- ☐ 12.5 Do YOU OR ANYONE ACTING ON YOUR BEHALF know of any diagram, reproduction, or model of any place or thing (except for items developed by expert witnesses covered by Code of Civil Procedure sections 2034.210-2034.310) concerning the INCIDENT? If so, for each item state:
- (a) the type (i.e., diagram, reproduction, or model);
  - (b) the subject matter; and
  - (c) the name, ADDRESS, and telephone number of each PERSON who has it.

- ☐ 12.6 Was a report made by any PERSON concerning the INCIDENT? If so, state:
- (a) the name, title, identification number, and employer of the PERSON who made the report;
  - (b) the date and type of report made;
  - (c) the name, ADDRESS, and telephone number of the PERSON for whom the report was made; and
  - (d) the name, ADDRESS, and telephone number of each PERSON who has the original or a copy of the report.

- ☐ 12.7 Have YOU OR ANYONE ACTING ON YOUR BEHALF inspected the scene of the INCIDENT? If so, for each inspection state:
- (a) the name, ADDRESS, and telephone number of the individual making the inspection (except for expert witnesses covered by Code of Civil Procedure sections 2034.210-2034.310); and
  - (b) the date of the inspection.

### 13.0 Investigation-Surveillance

- ☐ 13.1 Have YOU OR ANYONE ACTING ON YOUR BEHALF conducted surveillance of any individual involved in the INCIDENT or any party to this action? If so, for each surveillance state:
- (a) the name, ADDRESS, and telephone number of the individual or party;
  - (b) the time, date, and place of the surveillance;
  - (c) the name, ADDRESS, and telephone number of the individual who conducted the surveillance; and
  - (d) the name, ADDRESS, and telephone number of each PERSON who has the original or a copy of any surveillance photograph, film, or videotape.

- ☐ 13.2 Has a written report been prepared on the surveillance? If so, for each written report state:
- (a) the title;
  - (b) the date;
  - (c) the name, ADDRESS, and telephone number of the individual who prepared the report; and
  - (d) the name, ADDRESS, and telephone number of each PERSON who has the original or a copy.

### 14.0 Statutory or Regulatory Violations

- ☐ 14.1 Do YOU OR ANYONE ACTING ON YOUR BEHALF contend that any PERSON involved in the INCIDENT violated any statute, ordinance, or regulation and that the violation was a legal (proximate) cause of the INCIDENT? If so, identify the name, ADDRESS, and telephone number of each PERSON and the statute, ordinance, or regulation that was violated.
- ☐ 14.2 Was any PERSON cited or charged with a violation of any statute, ordinance, or regulation as a result of this INCIDENT? If so, for each PERSON state:
- (a) the name, ADDRESS, and telephone number of the PERSON;
  - (b) the statute, ordinance, or regulation allegedly violated;
  - (c) whether the PERSON entered a plea in response to the citation or charge and, if so, the plea entered; and
  - (d) the name and ADDRESS of the court or administrative agency, names of the parties, and case number.

### 15.0 Denials and Special or Affirmative Defenses

- ☐ 15.1 Identify each denial of a material allegation and each special or affirmative defense in your pleadings and for each:
- (a) state all facts upon which you base the denial or special or affirmative defense;
  - (b) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of those facts; and
  - (c) identify all DOCUMENTS and other tangible things that support your denial or special or affirmative defense, and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT.

### 16.0 Defendant's Contentions-Personal Injury

- ☐ 16.1 Do you contend that any PERSON, other than you or plaintiff, contributed to the occurrence of the INCIDENT or the injuries or damages claimed by plaintiff? If so, for each PERSON:
- (a) state the name, ADDRESS, and telephone number of the PERSON;
  - (b) state all facts upon which you base your contention;
  - (c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of the facts; and
  - (d) identify all DOCUMENTS and other tangible things that support your contention and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.
- ☐ 16.2 Do you contend that plaintiff was not injured in the INCIDENT? If so:
- (a) state all facts upon which you base your contention;
  - (b) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of the facts; and
  - (c) identify all DOCUMENTS and other tangible things that support your contention and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.



- ☐ 16.3 Do you contend that the injuries or the extent of the injuries claimed by plaintiff as disclosed in discovery proceedings thus far in this case were not caused by the **INCIDENT**? If so, for each injury:
- identify it;
  - state all facts upon which you base your contention;
  - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
  - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.
- ☐ 16.4 Do you contend that any of the services furnished by any **HEALTH CARE PROVIDER** claimed by plaintiff in discovery proceedings thus far in this case were not due to the **INCIDENT**? If so:
- identify each service;
  - state all facts upon which you base your contention;
  - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
  - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.
- ☐ 16.5 Do you contend that any of the costs of services furnished by any **HEALTH CARE PROVIDER** claimed as damages by plaintiff in discovery proceedings thus far in this case were not necessary or unreasonable? If so:
- identify each cost;
  - state all facts upon which you base your contention;
  - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
  - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.
- ☐ 16.6 Do you contend that any part of the loss of earnings or income claimed by plaintiff in discovery proceedings thus far in this case was unreasonable or was not caused by the **INCIDENT**? If so:
- identify each part of the loss;
  - state all facts upon which you base your contention;
  - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
  - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.
- ☐ 16.7 Do you contend that any of the property damage claimed by plaintiff in discovery Proceedings thus far in this case was not caused by the **INCIDENT**? If so:
- identify each item of property damage;
  - state all facts upon which you base your contention;
  - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
  - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

- ☐ 16.8 Do you contend that any of the costs of repairing the property damage claimed by plaintiff in discovery proceedings thus far in this case were unreasonable? If so:
- identify each cost item;
  - state all facts upon which you base your contention;
  - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
  - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.
- ☐ 16.9 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** (for example, insurance bureau index reports) concerning claims for personal injuries made before or after the **INCIDENT** by a plaintiff in this case? If so, for each plaintiff state:
- the source of each **DOCUMENT**;
  - the date each claim arose;
  - the nature of each claim; and
  - the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.
- ☐ 16.10 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** concerning the past or present physical, mental, or emotional condition of any plaintiff in this case from a **HEALTH CARE PROVIDER** not previously identified (except for expert witnesses covered by Code of Civil Procedure sections 2034.210-2034.310)? If so, for each plaintiff state:
- the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER**;
  - a description of each **DOCUMENT**; and
  - the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

#### 17.0 Responses to Request for Admissions

- ☐ 17.1 Is your response to each request for admission served with these interrogatories an unqualified admission? If not, for each response that is not an unqualified admission:
- state the number of the request;
  - state all facts upon which you base your response;
  - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts; and
  - identify all **DOCUMENTS** and other tangible things that support your response and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

18.0 [Reserved]

19.0 [Reserved]

#### 20.0 How the Incident Occurred-Motor Vehicle

- ☐ 20.1 State the date, time, and place of the **INCIDENT** (closest street **ADDRESS** or intersection).
- ☐ 20.2 For each vehicle involved in the **INCIDENT**, state:
- the year, make, model, and license number;
  - the name, **ADDRESS**, and telephone number of the driver;



- (c) the name, ADDRESS, and telephone number of each occupant other than the driver;
- (d) the name, ADDRESS, and telephone number of each registered owner;
- (e) the name, ADDRESS, and telephone number of each lessee;
- (f) the name, ADDRESS, and telephone number of each owner other than the registered owner or lien holder; and
- (g) the name of each owner who gave permission or consent to the driver to operate the vehicle.

☐ 20.3 State the ADDRESS and location where your trip began and the ADDRESS and location of your destination.

☐ 20.4 Describe the route that you followed from the beginning of your trip to the location of the INCIDENT, and state the location of each stop, other than routine traffic stops, during the trip leading up to the INCIDENT.

☐ 20.5 State the name of the street or roadway, the lane of travel, and the direction of travel of each vehicle involved in the INCIDENT for the 500 feet of travel before the INCIDENT.

☐ 20.6 Did the INCIDENT occur at an intersection? If so, describe all traffic control devices, signals, or signs at the intersection.

☐ 20.7 Was there a traffic signal facing you at the time of the INCIDENT? If so, state:

- (a) your location when you first saw it;
- (b) the color;
- (c) the number of seconds it had been that color; and
- (d) whether the color changed between the time you first saw it and the INCIDENT.

☐ 20.8 State how the INCIDENT occurred, giving the speed, direction, and location of each vehicle involved:

- (a) just before the INCIDENT;
- (b) at the time of the INCIDENT; and (c) just after the INCIDENT.

☐ 20.9 Do you have information that a malfunction or defect in a vehicle caused the INCIDENT? If so:

- (a) identify the vehicle;
- (b) identify each malfunction or defect;
- (c) state the name, ADDRESS, and telephone number of each PERSON who is a witness to or has information about each malfunction or defect; and
- (d) state the name, ADDRESS, and telephone number of each PERSON who has custody of each defective part.

☐ 20.10 Do you have information that any malfunction or defect in a vehicle contributed to the injuries sustained in the INCIDENT? If so:

- (a) identify the vehicle;
- (b) identify each malfunction or defect;
- (c) state the name, ADDRESS, and telephone number of each PERSON who is a witness to or has information about each malfunction or defect; and

- (d) state the name, ADDRESS, and telephone number of each PERSON who has custody of each defective part.

☐ 20.11 State the name, ADDRESS, and telephone number of each owner and each PERSON who has had possession since the INCIDENT of each vehicle involved in the INCIDENT.

25.0 [Reserved]

30.0 [Reserved]

40.0 [Reserved]

#### 50.0 Contract

☐ 50.1 For each agreement alleged in the pleadings:

- (a) identify each DOCUMENT that is part of the agreement and for each state the name, ADDRESS, and telephone number of each PERSON who has the DOCUMENT;
- (b) state each part of the agreement not in writing, the name, ADDRESS, and telephone number of each PERSON agreeing to that provision, and the date that part of the agreement was made;
- (c) identify all DOCUMENTS that evidence any part of the agreement not in writing and for each state the name, ADDRESS, and telephone number of each PERSON who has the DOCUMENT;
- (d) identify all DOCUMENTS that are part of any modification to the agreement, and for each state the name, ADDRESS, and telephone number of each PERSON who has the DOCUMENT;
- (e) state each modification not in writing, the date, and the name, ADDRESS, and telephone number of each PERSON agreeing to the modification, and the date the modification was made;
- (f) identify all DOCUMENTS that evidence any modification of the agreement not in writing and for each state the name, ADDRESS, and telephone number of each PERSON who has the DOCUMENT.

☐ 50.2 Was there a breach of any agreement alleged in the pleadings? If so, for each breach describe and give the date of every act or omission that you claim is the breach of the agreement.

☐ 50.3 Was performance of any agreement alleged in the pleadings excused? If so, identify each agreement excused and state why performance was excused.

☐ 50.4 Was any agreement alleged in the pleadings terminated by mutual agreement, release, accord and satisfaction, or novation? If so, identify each agreement terminated, the date of termination, and the basis of the termination.

☐ 50.5 Is any agreement alleged in the pleadings unenforceable? If so, identify each unenforceable agreement and state why it is unenforceable.

☐ 50.6 Is any agreement alleged in the pleadings ambiguous? If so, identify each ambiguous agreement and state why it is ambiguous.

60.0 [Reserved]

Case No. SCV261819

02-05-2018

Special Interrogatories Served on Liberty  
Mutual Insurance Company



LESLIE R. PERRY (SBN 062390)  
 JOHN J. JOHNSON (SBN 114902)  
 HEATHER-ANN T. YOUNG (SBN 283211)  
 PERRY, JOHNSON, ANDERSON,  
 MILLER & MOSKOWITZ, LLP  
 438 First Street, Fourth Floor  
 Santa Rosa, CA 95401  
 Telephone: (707) 525-8800  
 Facsimile: (707) 545-8242

Attorney for Plaintiffs  
 MARGRETT LEWIS, NICOLETTE LEWIS,  
 ALEXIS LEWIS, and JEFFREY LEWIS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SONOMA

NICOLETTE LEWIS, ALEXIS LEWIS,  
 MARGRETT LEWIS; and JEFFREY LEWIS

Plaintiff(s),

vs.

LIBERTY MUTUAL INSURANCE COMPANY,  
 LIBERTY INTERNATIONAL UNDERWRITERS,  
 and DOES 1 through 50, inclusive,

Defendant(s).

CASE No. 261819

Unlimited Civil Action

**PLAINTIFF NICOLETTE LEWIS'  
 SPECIAL INTERROGATORIES TO  
 DEFENDANT LIBERTY MUTUAL  
 INSURANCE COMPANY  
 [SET ONE]**

Department: 16

Judge: Hon. Patrick Broderick

Trial Date: not yet set

REQUESTING PARTY: Plaintiff NICOLETTE LEWIS

RESPONDING PARTIES: Defendant LIBERTY MUTUAL INSURANCE COMPANY

SET NUMBER: ONE

Pursuant to Code of Civil Procedure section 2030.010 et seq., Plaintiff NICOLETTE LEWIS requests that Defendant LIBERTY MUTUAL INSURANCE COMPANY, answer the following interrogatories under oath within 30 days from the date of service.

**DEFINITIONS**

A. As used herein the word "BROKER" means anyone or entity transacting insurance on behalf of ECOSMART, including, but not limited to representative or agent of OAMPS Insurance Brokers and/or Arthur J. Gallagher Insurance Brokers (including James Forster and/or Melissa Mudgè).

B. As used herein the words "CALIFORNIA BUSINESSES" means a company that you believed conducted business in California.

C. As used herein the word "CHANGED" or "CHANGES" means to modify, alter, change or restrict the terms or coverage of in any way between INSURANCE POLICY #1 and INSURANCE POLICY #2.

D. As used herein the words "CLAIMS MADE" means any claim made during the policy period, regardless of when the act that gave rise to the claim took place.

E. As used herein the words "COMBINED GENERAL & PRODUCTS LIABILITY POLICIES" means policies providing the same or similar general coverage to that contained in INSURANCE POLICY #1.

F. As used herein, the word "COMMUNICATION(S)" means any form of communication, including, but not limited to emails, letters (delivered by mail, personal delivery or otherwise), text, memorandum, facsimile, documents made available on the internet for viewing, downloading OR uploading (e.g. sharing Google Documents, Sharefile, Dropbox, etc.) and includes direct communications and also communications in which an individual is copied, blind copied, or in some fashion included in, or made privy to, the COMMUNICATION.

G. As used herein the words "DEFEND" or "DEFENDED" means to defend and indemnify in accordance with INSURANCE POLICY #1.

H. As used herein, the word "DOCUMENT" or "DOCUMENTS" is used herein to mean all "writings" as defined in California Evidence Code Section 250 (see text, below), including, but not limited to, all written, recorded, or graphic material, however produced or reproduced, of any

1 kind in your possession, custody, or control, or in the possession, custody, or control of any  
 2 officers, members, partners, employees, servants, or your agents or representatives, including,  
 3 without limitation, letters, correspondence, telegrams, memoranda, records, minutes, contracts,  
 4 agreements, memoranda, or records of telephone or personal conversations or conferences,  
 5 interoffice communications, emails, sound recordings, handwritings, ELECTRONICALLY  
 6 STORED INFORMATION, electronic data processing inputs, and memories of all kinds,  
 7 including hard drives, CD ROM data, tapes and discs, computer reports and printouts, microfilm,  
 8 bulletins, circulars, pamphlets, studies, notices, summaries, reports, books, teletype messages, bills  
 9 of lading, invoices, work sheets, and index cards, or copies of such documents where originals are  
 10 not available. The term "document" or "documents" includes any and all matter that relates in  
 11 whole or in part to the subject referred to in a demand to produce. Where a document has been  
 12 prepared in several copies that are not identical (or which by reason of subsequent modification,  
 13 addition, or notation are no longer identical), each non-identical copy is a separate "document."  
 14 DOCUMENT includes any COMMUNICATION.

15  
 16 Evidence Code Section 250: "Writing" means handwriting, typewriting, printing,  
 17 photostating, photographing, photocopying, transmitting by electronic mail or facsimile,  
 18 and every other means of recording upon any tangible thing, any form of communication  
 19 or representation, including letters, words, pictures, sounds, or symbols, or combinations  
 20 thereof, and any record thereby created, regardless of the manner in which the record has  
 21 been stored."

22 I. As used herein the word "ECOSMART" means EcoSmart, Inc., its agents, employees,  
 23 attorneys, accountants, investigators, insurance broker(s) and anyone else acting on its behalf,  
 24 The Fire Company Pty Ltd, Esmart Group Pty Ltd, any employee, representative or agent of  
 25 OAMPS Insurance Brokers and/or Arthur J. Gallagher Insurance Brokers (including James Forster  
 26 and/or Melissa Mudge).

27 J. As used herein the words "ECOSMART PRODUCT(S)" means any fuel produced by  
 28 ECOSMART that is intended for use by consumers, including but not limited to E-NRG.



1 K. As used herein the word "ELECTRONIC" means RELATING to technology having  
2 electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

3 L. As used herein the words "ELECTRONICALLY STORED INFORMATION" means  
4 information that is stored in an ELECTRONIC medium.

5 M. As used herein the word "FIRE COMPANY" means The Fire Company, Pty, Ltd., its  
6 agents, employees, attorneys, accountants, investigators, insurance broker(s) and anyone else  
7 acting on its behalf.  
8

9 N. As used herein, the words, "FLAME ARRESTOR" means deflagration and detonation  
10 prevention device, flashback arrestor, vapor flashback quencher, flame retarder, vapor flashback  
11 quenching guard or flame mitigation device.

12 O. As used herein the word "IDENTIFY" when referring to:

13 a. INSURANCE POLICY means:

14 (i) List in detail all policies covering negligence, product defect or any other  
15 form of legal action or claim and include:

16 (1) Name of policy;

17 (2) Coverage period

18 (3) Amount of coverage

19 (4) All individuals and ENTITIES covered by the policy

20 (5) Type of coverage

21 (6) Limits or exclusions of the policy

22 (7) All DOCUMENTS RELATING to the policy in relation to  
23 ECOSMART.  
24

25 b. NOTICE means to:

26 i. State the type of COMMUNICATION used to convey the NOTICE;  
27  
28

ii. State the date of the NOTICE; and

iii. Provide sufficient detail so that the NOTICE, if written, can be correctly identified when requesting production of it if it is a DOCUMENT.

c. COMMUNICATION means to:

i. State the type of communication, e.g., verbal, e-mail, letter, etc.;

ii. State the date of the communication;

iii. Summarize briefly what the communication related to and/or involved;

iv. Name the individuals who signed the document and provide their address, telephone number and position with any entity, company or organization they represented when the signed the communication.

v. State generally what the COMMUNICATIONS related to and involved.

vi. Provide sufficient definition of the communication so that if it is a DOCUMENT it can be requested to be produced without ambiguity.

d. DOCUMENT means to:

i. Name the DOCUMENT consistent with its content and which YOU will recognize in relation to a demand to produce that DOCUMENT;

ii. Provide a brief summary of the document;

iii. Date of the DOCUMENT;

iv. Purpose of the DOCUMENT;

v. If executed, who signed the DOCUMENT, including the signator's name, address, telephone number, and position with YOU.

O. As used herein the word INSURANCE means any form of liability insurance including, but not limited to General, Products OR Combined General & Products Liability Policies (including INSURANCE POLICY #1 OR INSURANCE POLICY #2).

P. As used herein the words "INSURANCE POLICY" (other than specific references to INSURANCE POLICY #1 and INSURANCE POLICY #2) means any form of insurance which provides coverage (including indemnity) for claims made against the insured.

Q. As used herein the words "INSURANCE POLICY #1" means Liberty International Underwriters Combined General & Products Liability Policy #ME-CAS-12-438176 with a period of insurance 4 p.m. April 30, 2013 to 4 p.m. April 30, 2014. (Exhibit 1)

1 R. As used herein the words "INSURANCE POLICY #2" means Liberty International  
2 Underwriters Combined General & Products Liability Policy #SY-CAS-13-438167 with a period  
3 of insurance 4 p.m. April 30, 2014 to 4 p.m. April 30, 2015. (Exhibit 2)

4 S. As used herein the word "LAWSUIT(S)" means any lawsuit based on personal injuries or  
5 death resulting from an ECOSMART product.

6 T. As used herein the words "LEWIS V. ECOSMART" means Lewis v. EcoSmart et al.,  
7 Case No. SCV-256907 (Exhibit 3) and also includes any amendments thereto.

8 U. As used herein the words LIBERTY INTERNATIONAL UNDERWRITERS and any  
9 agent, employees, representatives, attorneys (as to non-privileged communications), investigators,  
10 and anyone else acting on either entities' behalf or of any subsidiary or entity related to either  
11 named entity.

12 V. As used herein the word "NOTICE" means notice as required by Insurance Code § 678.1.

13 W. As used herein the words "NOTIFY" or "NOTIFIED" means put on notice or advise or  
14 report to in any manner, whether formally, informally or otherwise.

15 X. As used herein the word "OR" means and/or.

16 Y. As used herein, the words "PRINCIPAL OFFICE" means the place designated on the  
17 California Secretary of State Statement of Information or the office of the headquarters of the  
18 company.

19 Z. As used herein the words "PRODUCTS LIABILITY POLICIES" mean any insurance  
20 policy that includes Products Liability coverage, whether exclusively or in combination with  
21 another form of coverage.

22 AA. As used herein the words "REGARDING" or "RELATING" when used with respect to  
23 documents shall mean any and all documents that in any way or in any manner refer to, relate to,  
24 reflect, concern, contain, embody, or describe the subject matter referred to in the list of  
25 documents to be produced as identified below.  
26  
27  
28



BB. As used herein, the word "REGARDING" OR "RELATING " when used with respect to a fact or person includes referring to, alluding to, responding to, concerning, connected with, commenting on, about, regarding, discussing, constituting, evidencing or pertaining to.

CC. As used herein the word "RELATIONSHIP" means any way that Liberty Mutual Insurance Company is connected to or involved with Liberty International Underwriters, whether as an owner, subsidiary, a division, a trading company for, or otherwise.

DD. As used herein, the word, "RISK" means the exposure to danger or harm.

EE. As used herein, the word "TERM" means the clauses, coverages, conditions, limitations, endorsements, and any other provision of the insurance policy.

FF. As used herein, the words "TRADING NAME" refers to meaning as that term is used in INSURANCE POLICY #1 and INSURANCE POLICY #2

GG. As used herein, the words, "YOU" and "YOUR" means Liberty Mutual Insurance Company and any agent, employees, representatives, attorneys (as to non-privileged communications), investigators, and anyone else acting on behalf of Liberty Mutual Insurance Company or of any subsidiary or entity(ies) related thereto.

For Interrogatories 17-19, 27-40 and 47-49, YOU also means LIBERTY INTERNATIONAL UNDERWRITING.

**SPECIAL INTERROGATORY NO. 1:**

IDENTIFY all COMMUNICATIONS between YOU and LIBERTY INTERNATIONAL UNDERWRITERS RELATING to INSURANCE POLICY #1.

**SPECIAL INTERROGATORY NO. 2:**

IDENTIFY all COMMUNICATIONS between YOU and LIBERTY INTERNATIONAL UNDERWRITERS RELATING to INSURANCE POLICY #2.

///

**SPECIAL INTERROGATORY NO. 3:**

IDENTIFY all INSURANCE POLICIES issued by YOU covering ECOSMART from April 1, 2013 to April 1, 2016.

**SPECIAL INTERROGATORY NO. 4:**

IDENTIFY all INSURANCE POLICIES issued by LIBERTY INTERNATIONAL UNDERWRITING covering ECOSMART from April 1, 2013 to April 1, 2016.

**SPECIAL INTERROGATORY NO. 5:**

IDENTIFY all COMMUNICATIONS between YOU and ECOSMART RELATING to INSURANCE POLICY #1.

**SPECIAL INTERROGATORY NO. 6:**

IDENTIFY all COMMUNICATIONS between YOU and ECOSMART RELATING to INSURANCE POLICY #2.

**SPECIAL INTERROGATORY NO. 7:**

IDENTIFY all COMMUNICATIONS between YOU and LIBERTY INTERNATIONAL UNDERWRITERS RELATING to INSURANCE POLICY #1.

**SPECIAL INTERROGATORY NO. 8:**

IDENTIFY all COMMUNICATIONS between YOU and LIBERTY INTERNATIONAL UNDERWRITERS RELATING to INSURANCE POLICY #2.

**SPECIAL INTERROGATORY NO. 9:**

IDENTIFY all COMMUNICATIONS between YOU and LIBERTY INTERNATIONAL UNDERWRITERS RELATING to the denial of coverage to ECOSMART in *LEWIS V. ECOSMART*.

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**SPECIAL INTERROGATORY NO. 10:**

IDENTIFY all COMMUNICATIONS between YOU and BROKER RELATING to INSURANCE POLICY #1.

**SPECIAL INTERROGATORY NO. 11:**

IDENTIFY all COMMUNICATIONS between YOU a and BROKER RELATING to INSURANCE POLICY #2.

**SPECIAL INTERROGATORY NO. 12:**

IDENTIFY all COMMUNICATIONS between YOU and BROKER to the denial of coverage to ECOSMART in *LEWIS V. ECOSMART*.

**SPECIAL INTERROGATORY NO. 13:**

IDENTIFY all COMMUNICATIONS between YOU and FIRE COMPANY RELATING to INSURANCE POLICY #1.

**SPECIAL INTERROGATORY NO. 14:**

IDENTIFY all COMMUNICATIONS between YOU and FIRE COMPANY RELATING to INSURANCE POLICY #2.

**SPECIAL INTERROGATORY NO. 15:**

IDENTIFY all COMMUNICATIONS between YOU and FIRE COMPANY to the denial of coverage to ECOSMART in *LEWIS V. ECOSMART*.

**SPECIAL INTERROGATORY NO. 16:**

Why did YOU decline to provide a defense to ECOSMART in *LEWIS V. ECOSMART*?

**SPECIAL INTERROGATORY NO.17:**

Why did YOU decline to indemnify ECOSMART in *LEWIS V. ECOSMART*?

///



SPECIAL INTERROGATORY NO. 18:

Why did LIBERTY INTERNATIONAL UNDERWRITERS decline to provide a defense to ECOSMART in *LEWIS V. ECOSMART*?

SPECIAL INTERROGATORY NO. 19:

Why did LIBERTY INTERNATIONAL UNDERWRITERS decline to indemnify ECOSMART in *LEWIS V. ECOSMART*?

SPECIAL INTERROGATORY NO. 20:

REGARDING the statement by Angus Kench in an email dated April 21, 2015 (Exhibit 4), to wit "Based on the summons and in particular the circumstances summarised above the policy **will not respond** to this current claim" [emphasis added], would INSURANCE POLICY #1 have "responded" to the claims if it were still in effect as of June 8, 2014.

SPECIAL INTERROGATORY NO. 21:

If INSURANCE POLICY #1 was in full effect when Nicolette Lewis was injured as noted in *LEWIS v. ECOSMART*, would YOU have declined to indemnify ECOSMART in *LEWIS V. ECOSMART*?

SPECIAL INTERROGATORY NO. 22:

Would YOU have agreed to indemnify ECOSMART in *LEWIS v. ECOSMART* if INSURANCE POLICY #1 was in full effect when Nicolette Lewis was injured as noted in *LEWIS v. ECOSMART*.

SPECIAL INTERROGATORY NO. 23:

If INSURANCE POLICY #1 were in full effect when Nicolette Lewis was injured as noted in *LEWIS V. ECOSMART*, would YOU have DEFENDED ECOSMART in *LEWIS V. ECOSMART*?

///

1 **SPECIAL INTERROGATORY NO. 24:**

2 State in detail all facts RELATING to YOUR acceptance or declination to DEFEND  
3 ECOSMART in *LEWIS v. ECOSMART* if INSURANCE POLICY #1 was in full effect when  
4 Nicolette Lewis was injured, as noted in *LEWIS v. ECOSMART*.

5 **SPECIAL INTERROGATORY NO. 25:**

6  
7 What time frame was INSURANCE POLICY #1 in effect?

8 **SPECIAL INTERROGATORY NO. 26:**

9  
10 Were the TERMS of policy INSURANCE POLICY #1 CHANGED?

11 **SPECIAL INTERROGATORY NO. 27:**

12 If the terms of policy INSURANCE POLICY #1 CHANGED, state in detail what TERMS  
13 were CHANGED.

14 **SPECIAL INTERROGATORY NO. 28:**

15 If the terms of policy INSURANCE POLICY #1 CHANGED, state in detail all facts  
16 RELATING to the CHANGE.

17 **SPECIAL INTERROGATORY NO. 29:**

18 If the terms of policy INSURANCE POLICY #1 CHANGED, state in detail why  
19 CHANGES were made.

20 **SPECIAL INTERROGATORY NO. 30:**

21 If the terms of policy INSURANCE POLICY #1 CHANGED, IDENTIFY all  
22 DOCUMENTS RELATING to the CHANGE.

23 **SPECIAL INTERROGATORY NO. 31:**

24 If the terms of policy INSURANCE POLICY #1 CHANGED, IDENTIFY all persons with  
25 knowledge RELATING to the CHANGE.  
26  
27  
28

**SPECIAL INTERROGATORY NO. 32:**

If the terms of policy INSURANCE POLICY #1 CHANGED, IDENTIFY all facts YOU believe each person with knowledge RELATING to the CHANGE has RELATING to the CHANGE.

**SPECIAL INTERROGATORY NO. 33:**

Do YOU contend that YOU were justified in denying ECOSMART'S insurance coverage for *LEWIS V. ECOSMART*?

**SPECIAL INTERROGATORY NO. 34:**

If YOU contend that YOU were justified in denying ECOSMART'S insurance coverage for *LEWIS V. ECOSMART*, state all facts REGARDING this contention.

**SPECIAL INTERROGATORY NO. 35:**

If YOU contend that YOU were justified in denying ECOSMART'S insurance coverage for *LEWIS V. ECOSMART*, IDENTIFY all DOCUMENTS REGARDING this contention.

**SPECIAL INTERROGATORY NO. 36:**

If YOU contend that YOU were justified in denying ECOSMART'S insurance coverage for *LEWIS v. ECOSMART*, IDENTIFY all persons with knowledge REGARDING YOUR contention.

**SPECIAL INTERROGATORY NO. 37:**

If YOU contend that YOU were justified in denying ECOSMART'S insurance for *LEWIS v. ECOSMART*, for each person with knowledge REGARDING YOUR contention, state in detail what YOU believe that person has knowledge of.

**SPECIAL INTERROGATORY NO. 38:**

Do YOU contend that YOU provided NOTICE to ECOSMART REGARDING CHANGES to INSURANCE POLICY #1?



1 **SPECIAL INTERROGATORY NO. 39:**

2 If YOU contend that YOU provided NOTICE to ECOSMART REGARDING CHANGES  
3 to INSURANCE POLICY #1, IDENTIFY the NOTICE.

4 **SPECIAL INTERROGATORY NO. 40:**

5  
6 If YOU contend that YOU provided NOTICE to ECOSMART REGARDING CHANGES  
7 to INSURANCE POLICY #1, state all facts REGARDING YOUR contention.

8 **SPECIAL INTERROGATORY NO. 41:**

9  
10 If YOU contend that YOU provided NOTICE to ECOSMART REGARDING CHANGES  
11 to INSURANCE POLICY #1, IDENTIFY all DOCUMENTS REGARDING YOUR contention.

12 **SPECIAL INTERROGATORY NO. 42:**

13 If YOU contend that YOU provided NOTICE to ECOSMART REGARDING CHANGES  
14 to INSURANCE POLICY #1, IDENTIFY all persons with knowledge REGARDING YOUR  
15 contention.

16 **SPECIAL INTERROGATORY NO. 43:**

17  
18 If YOU contend that YOU provided NOTICE to ECOSMART REGARDING CHANGES  
19 to INSURANCE POLICY #1, for each person with knowledge REGARDING YOUR contention,  
20 state in detail what YOU believe that person has knowledge of.

21 **SPECIAL INTERROGATORY NO. 44:**

22 Do YOU contend that YOU did not provide NOTICE to ECOSMART REGARDING  
23 CHANGES to INSURANCE POLICY #1?

24 **SPECIAL INTERROGATORY NO. 45:**

25  
26 If YOU contend that YOU did not provide NOTICE to ECOSMART REGARDING  
27 CHANGES to INSURANCE POLICY #1, state all facts REGARDING YOUR contention.

28 ///

1 **SPECIAL INTERROGATORY NO. 46:**

2 If YOU contend that YOU did not provide NOTICE to ECOSMART REGARDING  
3 CHANGES to INSURANCE POLICY #1, for each person with knowledge REGARDING YOUR  
4 contention, state in detail what YOU believe that person has knowledge of.  
5

6 **SPECIAL INTERROGATORY NO. 47:**

7 Why was the date June 18, 2014 included in paragraph 7.24.3.3 of INSURANCE POLICY  
8 #2?

9 **SPECIAL INTERROGATORY NO. 48:**

10 IDENTIFY all COMMUNICATIONS REGARDING June 18, 2014 being the date  
11 included in paragraph 7.24.3.3 of INSURANCE POLICY #2?  
12

13 **SPECIAL INTERROGATORY NO. 49:**

14 IDENTIFY all persons with knowledge REGARDING June 18, 2014 being the date  
15 included in paragraph 7.24.3.3 of INSURANCE POLICY #2?  
16

17 **SPECIAL INTERROGATORY NO. 50:**

18 IDENTIFY all DOCUMENTS REGARDING June 18, 2014 being the date included in  
19 paragraph 7.24.3.3 of INSURANCE POLICY #2?  
20

21 **SPECIAL INTERROGATORY NO. 51:**

22 IDENTIFY each person who signed INSURANCE POLICY #1.

23 **SPECIAL INTERROGATORY NO. 52:**

24 IDENTIFY each person who signed INSURANCE POLICY #2.

25 **SPECIAL INTERROGATORY NO. 53:**

26 IDENTIFY all INSURANCE POLICIES YOU issued to ECOSMART during the last 10  
27 years.  
28

PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ LLP

1 **SPECIAL INTERROGATORY NO. 54:**

2 How many COMBINED GENERAL & PRODUCTS LIABILITY POLICIES have YOU  
3 issued to ECOSMART in the past ten years?

4 **SPECIAL INTERROGATORY NO. 55:**

5 How many insurance policies have YOU underwritten for CALIFORNIA BUSINESSES  
6 from January 1, 2008 to the date of YOUR response to this interrogatory?

7 **SPECIAL INTERROGATORY NO. 56:**

8 How many insurance policies for CALIFORNIA BUSINESSES did YOU have in effect  
9 on April 30, 2014?

10 **SPECIAL INTERROGATORY NO. 57:**

11 How many PRODUCTS LIABILITY POLICIES for CALIFORNIA BUSINESSES did  
12 YOU have in effect on April 30, 2014?

13 **SPECIAL INTERROGATORY NO. 58:**

14 How many COMBINED GENERAL & PRODUCTS LIABILITY POLICIES for  
15 CALIFORNIA BUSINESSES did YOU have in effect on April 30, 2014?

16 **SPECIAL INTERROGATORY NO. 59:**

17 Describe the RELATIONSHIP between YOU and LIBERTY INTERNATIONAL  
18 UNDERWRITERS.

19 **SPECIAL INTERROGATORY NO. 60:**

20 What does TRADING NAME mean as used in YOUR insurance policies?

21 **SPECIAL INTERROGATORY NO. 61:**

22 IDENTIFY all DOCUMENTS REGARDING what TRADING NAME means as used in  
23 YOUR insurance policies.

24  
25  
26  
27  
28 ///



1 **SPECIAL INTERROGATORY NO. 62:**

2 Did YOU COMMUNICATE with a BROKER REGARDING INSURANCE for  
3 ECOSMART from April 30, 2013 to present?

4 **SPECIAL INTERROGATORY NO. 63:**

5  
6 If YOU COMMUNICATED with a BROKER REGARDING INSURANCE for  
7 ECOSMART from April 30, 2013 to present, IDENTIFY the COMMUNICATION(S).

8 **SPECIAL INTERROGATORY NO. 64:**

9 What is the LEGAL RELATIONSHIP between YOU and LIBERTY INTERNATIONAL  
10 UNDERWRITERS?

11 **SPECIAL INTERROGATORY NO. 65:**

12 What is the corporate form and status of LIBERTY INTERNATIONAL  
13 UNDERWRITERS in Australia (or any state jurisdiction therein)?

14 **SPECIAL INTERROGATORY NO. 66:**

15 How did LIBERTY MUTUAL INSURANCE COMPANY's acquisition of Ironshore Inc.  
16 affect LIBERTY INTERNATIONAL UNDERWRITERS in Australia (or any state jurisdiction  
17 therein)?

18 **SPECIAL INTERROGATORY NO. 67:**

19 If you contend LIBERTY INTERNATIONAL UNDERWRITERS is a separately  
20 organized business entity, describe the ownership and voting interests held or controlled by  
21 LIBERTY MUTUAL INSURANCE COMPANY?

22 **SPECIAL INTERROGATORY NO. 68:**

23 If you contend LIBERTY INTERNATIONAL UNDERWRITERS is a separately  
24 organized business entity, describe any special rights held by LIBERTY MUTUAL INSURANCE  
25 COMPANY to direct the operations of LIBERTY INTERNATIONAL UNDERWRITERS,  
26  
27  
28

1 including but not limited to the power to nominate, elect, or appoint its directors and officers.

2 **SPECIAL INTERROGATORY NO. 69:**

3 IDENTIFY any and all licenses YOU've held in California for the past 10 years.

4 **SPECIAL INTERROGATORY NO. 70:**

5  
6 Were you continuously admitted as a commercial insurance company in California from  
7 April 1, 2013 to August 1, 2015?

8 **SPECIAL INTERROGATORY NO. 71:**

9 IDENTIFY what type of entity(ies) YOU have been for the past 10 years.

10  
11  
12  
13 DATED: February 1, 2018

PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ, LLP

By: 

LESLIE R. PERRY  
HEATHER-ANN YOUNG  
Attorneys for Plaintiffs  
NICOLETTE LEWIS, ALEXIS LEWIS,  
MARGRETT LEWIS and JEFFREY  
LEWIS

PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ LLP

Ex 1



**Liberty International Underwriters**

**Combined General & Products Liability Policy**



**Liberty**  
International  
Underwriters



## Policy Schedule

- |                         |  |
|-------------------------|--|
| 1. POLICY NUMBER:       | ME-CAS-12-438176   |
| 2. INSURED:             | The Fire Company Pty Ltd and EcoSmart Inc  |
| 3. PERIOD OF INSURANCE: | From: 30 <sup>th</sup> April 2013 at 4pm local standard time<br>To: 30 <sup>th</sup> April 2014 at 4pm local standard time                           |
| 4. INSURED'S BUSINESS:  | Design, manufacture, distribution, retailer, wholesale and importer of ethanol fire places, burners and accessories.                                 |
| 5. LIMIT OF INDEMNITY:  | AUD20,000,000 any one Occurrence in respect of public liability and in the aggregate during the Period of Insurance in respect of Product liability. |
| 6. DEDUCTIBLES:         | AUD10,000 each and every Occurrence (costs inclusive).<br><br>AUD25,000 each and every Occurrence (costs inclusive) for losses in North America      |
| 7. POLICY WORDING:      | LIU Combined General & Products Liability Policy form LIU-AUS-CAS-CGL-2000001 and attached endorsements.   |
| 8. PREMIUM:             | AUD86,000 (minimum and non-adjustable) plus charges.   |

This Schedule attaches to and forms part of LIU Combined General & Products Liability Policy Form LIU-AUS-CAS-CGL-2000001 and is valid only if it is signed and dated below by a person duly authorised by Liberty International Underwriters.



For and on behalf of  
Liberty International Underwriters

3<sup>rd</sup> May 2013

Date



## Combined General & Products Liability Policy

---

In consideration of the premium being paid by the Insured to LIU and in reliance upon the written statements and declarations contained in the proposal or insurance broker's quotation submission, LIU agrees to indemnify the Insured in accordance with the attached Schedule, Policy wording and endorsements where applicable.

### 1 Insuring Clause

---

Subject to the terms of this Policy, LIU will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation in respect of Injury and/or Damage first happening during the Period of Insurance as a result of an Occurrence in connection with the Insured's Business.

### 2 Definitions

---

2.1 "Asbestos" means:

2.1.1 That group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite; or

2.1.2 That group of man made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres,

And includes Asbestos Products and Products containing Asbestos.

2.2 "Damage" means:

2.2.1 Physical damage to or destruction of tangible property including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical damage that caused it; or

2.2.2 Loss of use of tangible property that is not physically damaged or destroyed provided such loss of use is caused by physical damage to other tangible property which first happened during the Period of Insurance. All such loss of use shall be deemed to happen at the time of the physical damage or destruction that caused it.

2.3 "Employment Practices" means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, unfair contracts, harassment or discrimination (sexual or otherwise) in respect of employment by the Insured.

2.4 "Injury" means:

2.4.1 Bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;

2.4.2 False arrest, wrongful detention or imprisonment, malicious prosecution;

2.4.3 Wrongful entry or eviction;





- 2.4.4 Assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing Injury and/or Damage or eliminating danger; or
- 2.4.5 Libel, slander, defamation of character or invasion of right of privacy.
- 2.5 "Insured" wherever used in this Policy means the Insured named in the Schedule and:
  - 2.5.1 Any subsidiary company of the Insured incorporated within Australia including subsidiaries thereof; or
  - 2.5.2 Any other entity incorporated within Australia controlled by the Insured and over which the Insured assumes active management.
- 2.6 "Insured's Business" is the business shown in the Schedule.
- 2.7 "LIU" means Liberty International Underwriters. Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, USA (The liability of members is limited).
- 2.8 "Limit of Indemnity" means the amount stated in the Schedule pursuant to Clause 5 of this Policy.
- 2.9 "Occurrence" means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Injury and/or Damage neither expected nor intended from the standpoint of the Insured. All events of a series consequent on or attributable to one source or original cause shall be deemed one Occurrence.
- 2.10 "Period of Insurance" is the period shown in the Policy.
- 2.11 "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, cinders, dust, odours, noise, acids, alkalis, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 2.12 "Product" means any commodity, article or thing (after it has ceased to be in the possession or under the control of the Insured) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the Insured or by others trading under the name of the Insured (including any container thereof other than a motor vehicle).
- 2.13 "Terrorism" means an act or acts:
  - 2.13.1 That are violent in nature or are dangerous to human life:
    - 2.13.1.1 That are a violation of the criminal laws of the United States of America or Australia or of any State or Territory of the United States of America or Australia or that would be a criminal violation if committed within the jurisdiction of the United States of America or Australia or any State or Territory of the United States of America or Australia and that have the apparent intent of:
      - 2.13.1.1.1 Intimidating or coercing any civilian population;
      - 2.13.1.1.2 Influencing the policy of any government by intimidation or coercion; or



2.13.1.1.3 Affecting the conduct of any government by mass destruction, assassination or kidnapping.

Or

2.13.2 That result in:

2.13.2.1 The denial of access to or services from web sites, computer networks or telecommunication equipment; or

2.13.2.2 The malfunction or degradation of web sites, computer networks, telecommunications equipment, mechanical equipment or the interruption to the functioning of web sites or such properties,

And that have the apparent intent of intimidating or coercing any civilian population or influencing the policy of any government by intimidation or coercion.

2.14 "Worker" means any person employed by the Insured or deemed to be employed by the Insured whether pursuant to any Workers' Compensation Law or otherwise.

2.15 "Workers' Compensation Law" means any law relating to compensation for injury to Workers or employees.

### 3 Indemnity to Others

---

Subject to the terms of this Policy and in accordance with Insuring Clause 1, this Policy will extend to pay to or on behalf of:

3.1 Any principal, in respect of that principal's vicarious liability for the negligent acts or omissions of the Insured pursuant to Definition 2.5 and arising out of the Insured's Business, but this Policy does not extend to the liability of any principal howsoever arising out of the negligence, breach of contract or breach of duty of such principal;

3.2 Any director, executive officer or Worker of the Insured or, where the Insured is a partnership, any partner of the Insured, but only while acting within the scope of their duties in such capacity;

3.3 The officers, committee and members of the Insured's canteen, social, sports, first aid/medical, fire fighting and employee welfare organisations in their respective capacity as such; or

3.4 The legal personal representative of any person entitled to indemnity under this Clause 3 in circumstances giving rise to indemnity under this Policy.

Provided always that all such persons or parties shall, whilst not being a party to this contract, observe, fulfil and be subject to the terms of this Policy in so far as they can apply as though they were the Insured.

### 4 Cross Liabilities

---

Subject at all times to the terms of this Policy, each person or party indemnified is separately indemnified in respect of claims made by any of them against any other of them provided that LIU's total liability shall not exceed the Limit of Indemnity for all claims under this Policy.



## 5 Limit of Indemnity

---

LIU's liability to pay compensation shall not exceed the sum stated in the Schedule in respect of any one claim or series of claims arising from one Occurrence.

The total aggregate liability of LIU for any one Period of Insurance for all claims in respect of or in any way connected with the Insured's Products shall not exceed the Limit of Indemnity stated in the Schedule.

## 6 Defence Costs

---

In addition to the Limit of Indemnity, LIU will pay all reasonable legal costs and/or expenses incurred with LIU's prior written consent in connection with any claim for which the Insured is indemnified by this Policy.

Provided that LIU shall not be liable for legal costs and/or expenses where indemnity is not provided by this Policy.

Provided that LIU shall not be liable for legal costs and/or expenses for or in respect of representation at any formal legal inquiry involving an accident resulting in Injury or at any coroner's inquiry or defending any proceedings in a court of summary jurisdiction.

Provided that LIU shall not pay any legal costs and/or expenses in respect of any Occurrence after LIU has paid compensation up to the Limit of Indemnity.

Provided further that the legal costs and/or expenses incurred in connection with claims made and/or actions instituted within the United States of America or Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries, shall form part of the Limit of Indemnity and will not be payable by LIU in addition to the Limit of Indemnity.

In the event the Insured is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this Policy, the Insured and LIU will use their best efforts to agree upon a fair and proper allocation of legal costs and/or expenses or any other amount insured under this Policy which relate solely to what is covered under this Policy.

In the event that an agreement cannot be reached, a Senior Counsel (to be mutually agreed upon by LIU and the Insured) shall, as an expert and not an arbitrator, determine a fair and proper allocation. Until the Senior Counsel has made a determination LIU may, in its absolute discretion, pay such legal costs and/or expenses or any other amount insured under this Policy as it considers appropriate.

## 7 Exclusions

---

This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

- 7.1 The ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the Insured of any motor vehicle or trailer which is required by law to be registered or in respect of which there is required by law to be in force a policy of compulsory liability insurance or in relation to which there existed a statutory scheme providing compensation for Injury, but this exclusion does not apply to:
  - 7.1.1 Injury for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law.





- 7.1.2 Injury caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law;
- 7.1.3 Damage caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;
- 7.1.4 Damage to any bridge, weighbridge or road, or anything beneath such bridge, weighbridge or road caused by the weight of any motor vehicle or trailer or of the load carried thereon; or
- 7.1.5 Damage to any motor vehicle or trailer (not owned, leased or hired by, under hire purchase, on loan or rented to the Insured) temporarily in the Insured's custody or control for the purpose of parking and directly arising out of such parking.
- 7.2 Damage to property owned, leased, hired by, under hire purchase, on loan or rented to the Insured or otherwise in the Insured's care, custody or control other than:
  - 7.2.1 Premises (or to contents thereof) temporarily occupied by the Insured for the purpose of carrying out works thereto or thereon, but no indemnity is granted for liability in respect of physical damage to or destruction of that part of any premises or contents on which the Insured is or has been working on if the physical damage or destruction arises from such work;
  - 7.2.2 Premises tenanted by the Insured;
  - 7.2.3 Directors', employees' and visitors' clothing and personal effects; or
  - 7.2.4 Other property not owned by the Insured but temporarily in the Insured's possession provided:
    - 7.2.4.1 No indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which the Insured is or has been working on if the physical damage or destruction arises from such work; and
    - 7.2.4.2 LIU's limit of liability under this Clause 7.2.4 does not exceed AUD100,000 each and every Occurrence and in the aggregate for any one Period of Insurance.

Provided further that no indemnity is granted under this Policy in respect of liability assumed by the Insured under any contract or agreement which requires the Insured to effect material damage insurance on premises, property or goods not owned by the Insured.
- 7.3 Damages claimed for, and/or the costs of withdrawal, recall, inspection, repair, replacement, disposal or loss of use of the Insured's Products or of any property of which such Products form a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.
- 7.4 Damage to the Insured's Products if such Damage is attributable to any defect therein or harmful nature or unsuitability thereof.
- 7.5 The cost of performing, completing, correcting or improving any work undertaken by the Insured.



- 7.6 Any Product guarantee or warranty given by or on behalf of the Insured but this exclusion shall not apply to the requirements of any Federal or State legislation with respect to Product safety and information.
- 7.7 Liability assumed under the terms of a contract, agreement or warranty unless and only to the extent that the Insured would have been liable in the absence of such contract, agreement or warranty.
- 7.8 Liability assumed where the Insured may have been able to recover from another party but for an agreement between the Insured and such party where the Insured has waived, released or abandoned any right of recourse or recovery against any party.
- 7.9 Any Product which is incorporated into the structure, machinery or controls of any aircraft, aerial device, watercraft or hovercraft.
- 7.10 Injury to any Worker.  
 Provided that if the Insured:
  - 7.10.1 Is required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited in amount or not) for such Injury; or
  - 7.10.2 Is not required to so insure or otherwise fund such liability by reason only that the Injury is to a person who is not a Worker or "employee" within the meaning of the relevant Workers' Compensation Law or the Injury is not an Injury which is subject to such Law,
 Then this Policy will respond to the extent that the Insured's liability would not be covered under any such fund, scheme, policy of insurance or self insurance arrangement had the Insured complied with it's obligations pursuant to such Law.
- 7.11 7.11.1 Any Workers' Compensation Law;
  - 7.11.2 The provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination; or
  - 7.11.3 Employment Practices.
- 7.12 Libel, slander and/or other defamation:
  - 7.12.1 Made prior to the commencement of the Period of Insurance;
  - 7.12.2 Made at the Insured's direction or with the Insured's authority or with knowledge of its falsity; or
  - 7.12.3 Related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the Insured.
- 7.13 The loss of use of tangible property which has not been physically damaged or destroyed resulting from:
  - 7.13.1 A delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or



7.13.2 The failure of any Product to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured but this exclusion does not apply to loss of use of other tangible property directly or indirectly caused by, arising out of or in any way connected with or resulting from the sudden and accidental physical damage to or destruction of the Product after such Product has been put to use by any person or organisation other than the Insured.

7.14 Any change in the nature of the Insured's Business which:

7.14.1 Occurred during the currency of this Policy; and

7.14.2 Was known by the Insured, or would have been known by a reasonable person in the circumstances, to be likely to increase the risk of Injury or Damage for which indemnity is provided by this Policy.

For the purposes of this exclusion, where the Insured is a corporate body, the knowledge of any director or officer of the Insured shall be deemed to be the knowledge of the Insured.

7.15 The rendering of or failure to render professional advice or service or any error or omission connected therewith given for a fee by the Insured or any person covered by Clause 3 of this Policy.

Provided that this exclusion does not apply to the rendering of first aid or medical services on the Insured's premises by medical persons employed by the Insured.

7.16 7.16.1 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;

7.16.2 Testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect;

7.16.3 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others; or

7.16.4 Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants.

Provided always that exclusions 7.16.1, 7.16.2 and 7.16.3 shall not apply to liability which is directly caused by a sudden, accidental, instantaneous, unintended, identifiable and unexpected happening which takes place in its entirety at a specific time and place.

The total aggregate liability of LIU for all claims covered in any one Period of Insurance in respect of the proviso above shall not exceed the Limit of Indemnity shown in the Schedule.

7.17 Injury sustained due to the inhalation or ingestion of, or exposure to:

7.17.1 Tobacco or tobacco smoke; or

7.17.2 Any ingredient or additive present in any articles, items or goods which contain or include tobacco.

7.18 7.18.1 Ionising radiations or contamination from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self sustaining process of nuclear fission or fusion; or





7.18.2 Nuclear weapons material.

7.19 And regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

7.19.1 War and military action which includes without limitation the following:

7.19.1.1 War, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;

7.19.1.2 Warlike action by military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

7.19.1.3 Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

7.19.2 Any actual or threatened act of domestic or international Terrorism committed by a person or persons acting:

7.19.2.1 Alone or on behalf of or in connection with any organisation; or

7.19.2.2 With the goal of furthering any political, social, religious, ideological or similar objective.

7.19.3 Action taken to prevent or defend against an act of Terrorism.

If an act of Terrorism involves chemical or biological weapons, this Terrorism exclusion will still apply.

If an act of Terrorism involves nuclear reaction, nuclear radiation or radioactive contamination, this Terrorism exclusion will apply to liabilities that result from such nuclear reaction or nuclear radiation or radioactive contamination in place of Exclusion 7.18.

7.20 The ownership, maintenance, operation, possession or use by or on behalf of the Insured of:

7.20.1 Any aircraft or aerial device;

7.20.2 Any watercraft exceeding 10 metres in length; or

7.20.3 Any hovercraft.

7.21 The Deductible and/or self insured retention shown in the Schedule.

7.22 The erection, demolition, alteration of and/or addition to buildings by or on behalf of the Insured except for contracts not exceeding in cost the sum of AUD500,000 or 10% of the Limit of Indemnity whichever is the lesser.

7.23 Asbestos.

7.24 7.24.1 Claims made and actions instituted within the United States of America or Canada and their respective territories and protectorates, and any other territory coming within the jurisdiction of the courts of the United States of America or Canada; or



7.24.2 Claims and actions to which the laws of the United States of America or Canada and their respective territories and protectorates apply.

Provided that this exclusion does not apply to claims and actions caused by an employee of the Insured who normally resides in Australia while such employee is temporarily travelling on behalf of the Insured outside Australia.

7.25 Fines, penalties, punitive damages, exemplary damages, multiplication of compensatory damages, liquidated damages and/or aggravated damages.

7.26 Any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of the Insured or any person covered by Clause 3 of this Policy.

## 8 General Conditions

8.1 The Insured shall give written notice to LIU as soon as possible of any claim under this Policy and shall give all such additional information as LIU may require.

8.2 No admission, offer, promise, or payment shall be made or given by or on behalf of the Insured without the prior written consent of LIU who shall be entitled but not obligated to take over the conduct in the name of the Insured of the defence or settlement of any claim or to prosecute in the name of the Insured for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as LIU shall require.

8.3 This Policy and any endorsements attached to this Policy shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.

8.4 The amount shown within the Schedule as a Deductible and/or self insured retention is the first amount for all claims arising out of any one Occurrence which is to be borne by the Insured or any person covered by Clause 3 of this Policy.

8.5 LIU may at any time discharge its total liability to the Insured in respect of any one claim or series of claims arising from one Occurrence by paying to or on behalf of the Insured:

8.5.1 The total amount in respect of such claim to which the Insured is entitled to indemnity under this Policy;

8.5.2 The total amount sought by the claimant for such claim; or

8.5.3 The total amount for which such claim can be settled.

And in addition to such payment LIU will pay Defence Costs incurred up to the date of payment as provided for by Clause 6 of this Policy.

Upon such payment, LIU shall relinquish conduct or control of such claim and be under no further liability under this Policy in connection with such claim including but not limited to Defence Costs.

8.6 This Policy shall be interpreted in accordance with the laws of Australia and all claims for indemnity under this Policy shall be decided in accordance with those laws. All matters arising from or relating to the construction, operation or interpretation of the Policy shall be submitted to the exclusive jurisdiction of the Australian Courts.



8.7 The Insured must:

- 8.7.1 Exercise reasonable care that only competent Workers and/or employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
- 8.7.2 Take all reasonable precautions to:
  - 8.7.2.1 Prevent Injury and Damage;
  - 8.7.2.2 Prevent the manufacture, sale or supply of defective Products; and
  - 8.7.2.3 Comply and ensure that its Workers, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property;
- 8.7.3 At its own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect; and
- 8.7.4 Assist and co-operate fully and promptly with LIU in the investigation, settlement or defence of any claim or matters relating or in connection thereto.

The amount of any benefit under this Policy for any liability caused or contributed to by the lack of such precautions, measures and compliances shall be reduced by the amount that fairly represents the extent to which LIU's interests have been prejudiced thereby.

- 8.8 Where the premium is provisionally based on the Insured's estimates, the Insured shall keep accurate records and after expiry of the Period of Insurance declare as soon as possible such details as LIU requires and the premium shall be adjusted and any difference paid by or allowed to the Insured as the case may be subject to any minimum premium that may apply.

- 8.9 The Insured may cancel this Policy at any time by giving notice in writing to LIU.

LIU may cancel this Policy at any time where:

- 8.9.1 It is entitled to do so pursuant to the *Insurance Contracts Act 1984* or any amendments thereto;
- 8.9.2 The Insured has failed to notify LIU of any specific act or omission where such notification is required under the terms or conditions of this Policy; or
- 8.9.3 The Insured has acted in contravention of or omitted to act in compliance with any term of this Policy which empowers LIU to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by LIU shall take effect either at the time when another contract of insurance between the Insured and LIU or some other insurer (being a contract that is intended by the Insured to replace this Policy) is entered into or at 4pm on the 3rd business day after the date on which notice was given to the Insured by LIU, whichever is the earlier.





Where the Insured comprises more than one person or company, it is agreed that the Insured referred to in the Schedule shall be the agent of each of the other Insured persons or companies or others indemnified by Clause 3 for the purposes of receiving any notice of cancellation pursuant to this General Condition, or any other notice, statement, document or information relating to this Policy.

Where the Insured has a broker, nothing shall restrict LIU's right to notify the broker as agent of the Insured.

8.10 Notwithstanding anything else to the contrary in the Policy, whenever coverage provided by this Policy would be in violation of any applicable economic, trade or other sanction or law, such coverage shall be null and void and LIU has no obligation to pay a claim if to do so would breach that sanction or law.

- 8.11 8.11.1 Words importing persons shall include corporations and other legal entities;
- 8.11.2 References in the singular shall be deemed to include the plural and vice versa;
- 8.11.3 Words depicting any gender include reference to all other genders;
- 8.11.4 References to any legislation or subordinate instruments shall refer to such legislation or subordinate instruments as amended from time to time and in force; and
- 8.11.5 Headings have been included for ease of reference and it is understood and agreed that this Policy is not to be construed or interpreted by reference to such headings.

8.12 Each Insured agrees that LIU may issue by electronic mail or post any notices required to be given under the Insurance Contracts Act or otherwise.

8.13 Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company ("LMIC"), a stock insurance company incorporated in Massachusetts USA. LMIC is an indirect subsidiary of Liberty Mutual Holding Company, Inc. ("LMHC"), a Massachusetts USA mutual holding company. NOTICE IS HEREBY GIVEN that the annual meeting of LMHC is held on the second Wednesday in April of each year at ten o'clock in the morning, local time, at LMHC's office at 175 Berkeley Street, Boston, Massachusetts USA. This notice is for members of LMHC only. One becomes a member of LMHC by virtue of being a policyholder of LMIC. Membership rights terminate when one ceases to be a policyholder of LMIC. Members of LMHC may request a copy of LMHC's annual financial statements, which are posted on Liberty Mutual's website at [www.libertymutual.com](http://www.libertymutual.com) by writing to Liberty Mutual Holding Company Inc., 175 Berkeley Street, Boston, Massachusetts 02116.

Signed on behalf of Liberty International Underwriters



For and on behalf of  
Liberty International Underwriters

3<sup>rd</sup> May 2013

Date



Endorsements attaching to and forming part of Policy Number ME-CAS-12-438176

Insured: The Fire Company Pty Ltd and EcoSmart Inc

Endorsements effective from: 30<sup>th</sup> April 2013

**Endorsement 1.**

**USA – Canada (incl. Domiciled Operations & Jurisdiction)**

The following amendments are made to this Policy in respect of the Insured's operations and the Insured's Products exported by the Insured to the United States of America or Canada:

1. In respect of the Insured's operations domiciled in the United States of America or Canada only and Products exported to the United States of America or Canada, Exclusion 7.16 is deleted and replaced by the following:
  - 7.16 7.16.1 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;
  - 7.16.2 Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;
  - 7.16.3 Testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect;
  - 7.16.4 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others.
2. Exclusion 7.24 is deleted.

**Endorsement 2.**

**Vendors Liability**

1. Clause 3 **Indemnity to Others**, is extended to include the following:
  - 3.5 Any person or organisation designated below in the Schedule of Vendors (herein referred to as "Vendor") but only with respect to the distribution or sale of the Insured's Products provided always that the Vendor shall observe, fulfill and be subject to the terms, conditions, limitations and exclusions of this Policy in so far as they can apply as though they were the Insured.

This endorsement does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

  1. Any warranty given by the Vendor;
  2. Any liability assumed by the Vendor under contract or agreement which would not have attached in the absence of such contract or agreement;
  3. The distribution or sale for a purpose unauthorised by the Insured;
  4. Any act, error or omission of the Vendor which changes the condition of any Product;
  5. The failure by the Vendor to maintain any Product in merchantable condition;



6. Any failure to make such inspections, adjustments, tests or servicing as the Vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of any Product;
7. Any Product which after distribution or sale by the Insured has been labelled, relabelled, packaged, repackaged or replaced by the Vendor;
8. Any Product which after distribution or sale by the Insured is used as a container, part or ingredient of any other product, thing or substance by or for the Vendor;
9. The demonstration, assembly, installation, servicing or repair of any Product by the Vendor;
10. Any Injury or Damage happening within the Vendor's premises;
11. The liability of any person or organisation from whom the Insured has acquired any Product or any ingredient or part contained in or forming part of such Product or container accompanying or containing such Product; or
12. Any Product design, formula or specification supplied by the Vendor.

2. Schedule Of Vendors

Name

Room and Board Inc

Address

4600 Olson Memorial Hwy Frontage Road  
Minneapolis, MN 55422 USA

Nothing contained in these endorsements shall in any way serve to increase the Limit of Indemnity stated in the Schedule.

Other than as amended above, the terms of this Policy shall continue to apply.



For and on behalf of  
Liberty International Underwriters

3<sup>rd</sup> May 2013

Date



Ex. 2

**Liberty International Underwriters**

**Combined General & Products Liability Policy**





## Policy Schedule

1. POLICY NUMBER: SY-CAS-13-438176
2. INSURED: The Fire Company Pty Ltd and EcoSmart Inc
3. PERIOD OF INSURANCE: From: 30<sup>th</sup> April 2014 at 4pm local standard time  
To: 30<sup>th</sup> April 2015 at 4pm local standard time
4. INSURED'S BUSINESS: Design, manufacture, distribution, retailer, wholesaler and importer of ethanol fireplaces, burners and accessories.
5. LIMIT OF INDEMNITY: AUD20,000,000 any one Occurrence in respect of public liability and in the aggregate during the Period of Insurance in respect of Product liability.
6. DEDUCTIBLES: AUD10,000 each and every Occurrence (costs inclusive).  
  
Other than in respect of claims for injury to contractors, subcontractors and/or labour hire workers for which the Deductible is AUD 25,000 any one Occurrence (costs inclusive) and for losses in North America arising out of any fuel whether supplied by the Insured or by a third party vendor and/or any device intended to hold, store, decant or transport fuel which is AUD 250,000 any one Occurrence (cost inclusive).
7. POLICY WORDING: LIU Combined General & Products Liability Policy form LIU-AUS-CAS-CGL-2000001 and attached endorsements.
8. PREMIUM: AUD150,000 plus charges.

This Schedule attaches to and forms part of LIU Combined General & Products Liability Policy Form LIU-AUS-CAS-CGL-2000001 and is valid only if it is signed and dated below by a person duly authorised by Liberty International Underwriters.




For and on behalf of  
Liberty International Underwriters

8<sup>th</sup> July 2014

Date





## Combined General & Products Liability Policy

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In consideration of the premium being paid by the Insured to LIU and in reliance upon the written statements and declarations contained in the proposal or insurance broker's quotation submission, LIU agrees to indemnify the Insured in accordance with the attached Schedule, Policy wording and endorsements where applicable.

### 1 Insuring Clause

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Subject to the terms of this Policy, LIU will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation in respect of Injury and/or Damage first happening during the Period of Insurance as a result of an Occurrence in connection with the Insured's Business.

### 2 Definitions

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#### 2.1 "Asbestos" means:

2.1.1 That group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite; or

2.1.2 That group of man made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres,

And includes Asbestos Products and Products containing Asbestos.

#### 2.2 "Damage" means:

2.2.1 Physical damage to or destruction of tangible property including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical damage that caused it; or

2.2.2 Loss of use of tangible property that is not physically damaged or destroyed provided such loss of use is caused by physical damage to other tangible property which first happened during the Period of Insurance. All such loss of use shall be deemed to happen at the time of the physical damage or destruction that caused it.

#### 2.3 "Employment Practices" means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, unfair contracts, harassment or discrimination (sexual or otherwise) in respect of employment by the Insured.

#### 2.4 "Injury" means:

2.4.1 Bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;

2.4.2 False arrest, wrongful detention or imprisonment, malicious prosecution;

2.4.3 Wrongful entry or eviction;



- 2.4.4 Assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing Injury and/or Damage or eliminating danger; or
- 2.4.5 Libel, slander, defamation of character or invasion of right of privacy.
- 2.5 "Insured" wherever used in this Policy means the Insured named in the Schedule and:
  - 2.5.1 Any subsidiary company of the Insured incorporated within Australia including subsidiaries thereof; or
  - 2.5.2 Any other entity incorporated within Australia controlled by the Insured and over which the Insured assumes active management.
- 2.6 "Insured's Business" is the business shown in the Schedule.
- 2.7 "LIU" means Liberty International Underwriters. Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, USA (The liability of members is limited).
- 2.8 "Limit of Indemnity" means the amount stated in the Schedule pursuant to Clause 5 of this Policy.
- 2.9 "Occurrence" means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Injury and/or Damage neither expected nor intended from the standpoint of the Insured. All events of a series consequent on or attributable to one source or original cause shall be deemed one Occurrence.
- 2.10 "Period of Insurance" is the period shown in the Policy.
- 2.11 "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, cinders, dust, odours, noise, acids, alkalis, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 2.12 "Product" means any commodity, article or thing (after it has ceased to be in the possession or under the control of the Insured) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the Insured or by others trading under the name of the Insured (including any container thereof other than a motor vehicle).
- 2.13 "Terrorism" means an act or acts:
  - 2.13.1 That are violent in nature or are dangerous to human life:
    - 2.13.1.1 That are a violation of the criminal laws of the United States of America or Australia or of any State or Territory of the United States of America or Australia or that would be a criminal violation if committed within the jurisdiction of the United States of America or Australia or any State or Territory of the United States of America or Australia and that have the apparent intent of:
      - 2.13.1.1.1 Intimidating or coercing any civilian population;
      - 2.13.1.1.2 Influencing the policy of any government by intimidation or coercion; or



2.13.1.1.3 Affecting the conduct of any government by mass destruction, assassination or kidnapping.

Or

2.13.2 That result in:

2.13.2.1 The denial of access to or services from web sites, computer networks or telecommunication equipment; or

2.13.2.2 The malfunction or degradation of web sites, computer networks, telecommunications equipment, mechanical equipment or the interruption to the functioning of web sites or such properties.

And that have the apparent intent of intimidating or coercing any civilian population or influencing the policy of any government by intimidation or coercion.

2.14 "Worker" means any person employed by the Insured or deemed to be employed by the Insured whether pursuant to any Workers' Compensation Law or otherwise.

2.15 "Workers' Compensation Law" means any law relating to compensation for Injury to Workers or employees.

### 3 Indemnity to Others

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Subject to the terms of this Policy and in accordance with Insuring Clause 1, this Policy will extend to pay to or on behalf of:

3.1 Any principal, in respect of that principal's vicarious liability for the negligent acts or omissions of the Insured pursuant to Definition 2.5 and arising out of the Insured's Business, but this Policy does not extend to the liability of any principal howsoever arising out of the negligence, breach of contract or breach of duty of such principal;

3.2 Any director, executive officer or Worker of the Insured or, where the Insured is a partnership, any partner of the Insured, but only while acting within the scope of their duties in such capacity;

3.3 The officers, committee and members of the Insured's canteen, social, sports, first aid/medical, fire fighting and employee welfare organisations in their respective capacity as such; or

3.4 The legal personal representative of any person entitled to indemnity under this Clause 3 in circumstances giving rise to indemnity under this Policy.

Provided always that all such persons or parties shall, whilst not being a party to this contract, observe, fulfil and be subject to the terms of this Policy in so far as they can apply as though they were the Insured.

### 4 Cross Liabilities

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Subject at all times to the terms of this Policy, each person or party indemnified is separately indemnified in respect of claims made by any of them against any other of them provided that LIU's total liability shall not exceed the Limit of Indemnity for all claims under this Policy.





## 5 Limit of Indemnity

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LIU's liability to pay compensation shall not exceed the sum stated in the Schedule in respect of any one claim or series of claims arising from one Occurrence.

The total aggregate liability of LIU for any one Period of Insurance for all claims in respect of or in any way connected with the Insured's Products shall not exceed the Limit of Indemnity stated in the Schedule.

## 6 Defence Costs

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In addition to the Limit of Indemnity, LIU will pay all reasonable legal costs and/or expenses incurred with LIU's prior written consent in connection with any claim for which the Insured is indemnified by this Policy.

Provided that LIU shall not be liable for legal costs and/or expenses where indemnity is not provided by this Policy.

Provided that LIU shall not be liable for legal costs and/or expenses for or in respect of representation at any formal legal inquiry involving an accident resulting in Injury or at any coroner's inquiry or defending any proceedings in a court of summary jurisdiction.

Provided that LIU shall not pay any legal costs and/or expenses in respect of any Occurrence after LIU has paid compensation up to the Limit of Indemnity.

Provided further that the legal costs and/or expenses incurred in connection with claims made and/or actions instituted within the United States of America or Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries, shall form part of the Limit of Indemnity and will not be payable by LIU in addition to the Limit of Indemnity.

In the event the Insured is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this Policy, the Insured and LIU will use their best efforts to agree upon a fair and proper allocation of legal costs and/or expenses or any other amount insured under this Policy which relate solely to what is covered under this Policy.

In the event that an agreement cannot be reached, a Senior Counsel (to be mutually agreed upon by LIU and the Insured) shall, as an expert and not an arbitrator, determine a fair and proper allocation. Until the Senior Counsel has made a determination LIU may, in its absolute discretion, pay such legal costs and/or expenses or any other amount insured under this Policy as it considers appropriate.

## 7 Exclusions

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This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

- 7.1 The ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the Insured of any motor vehicle or trailer which is required by law to be registered or in respect of which there is required by law to be in force a policy of compulsory liability insurance or in relation to which there existed a statutory scheme providing compensation for Injury, but this exclusion does not apply to:
  - 7.1.1 Injury for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law;



- 7.1.2 Injury caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law;
- 7.1.3 Damage caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;
- 7.1.4 Damage to any bridge, weighbridge or road, or anything beneath such bridge, weighbridge or road caused by the weight of any motor vehicle or trailer or of the load carried thereon; or
- 7.1.5 Damage to any motor vehicle or trailer (not owned, leased or hired by, under hire purchase, on loan or rented to the Insured) temporarily in the Insured's custody or control for the purpose of parking and directly arising out of such parking.
- 7.2 Damage to property owned, leased, hired by, under hire purchase, on loan or rented to the Insured or otherwise in the Insured's care, custody or control other than:
  - 7.2.1 Premises (or to contents thereof) temporarily occupied by the Insured for the purpose of carrying out works thereto or thereon, but no indemnity is granted for liability in respect of physical damage to or destruction of that part of any premises or contents on which the Insured is or has been working on if the physical damage or destruction arises from such work;
  - 7.2.2 Premises tenanted by the Insured;
  - 7.2.3 Directors', employees' and visitors' clothing and personal effects; or
  - 7.2.4 Other property not owned by the Insured but temporarily in the Insured's possession provided:
    - 7.2.4.1 No indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which the Insured is or has been working on if the physical damage or destruction arises from such work; and
    - 7.2.4.2 LIU's limit of liability under this Clause 7.2.4 does not exceed AUD100,000 each and every Occurrence and in the aggregate for any one Period of Insurance.

Provided further that no indemnity is granted under this Policy in respect of liability assumed by the Insured under any contract or agreement which requires the Insured to effect material damage insurance on premises, property or goods not owned by the Insured.

- 7.3 Damages claimed for, and/or the costs of withdrawal, recall, inspection, repair, replacement, disposal or loss of use of the Insured's Products or of any property of which such Products form a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.
- 7.4 Damage to the Insured's Products if such Damage is attributable to any defect therein or harmful nature or unsuitability thereof.
- 7.5 The cost of performing, completing, correcting or improving any work undertaken by the Insured.



- 7.6 Any Product guarantee or warranty given by or on behalf of the Insured but this exclusion shall not apply to the requirements of any Federal or State legislation with respect to Product safety and information.
- 7.7 Liability assumed under the terms of a contract, agreement or warranty unless and only to the extent that the Insured would have been liable in the absence of such contract, agreement or warranty.
- 7.8 Liability assumed where the Insured may have been able to recover from another party but for an agreement between the Insured and such party where the Insured has waived, released or abandoned any right of recourse or recovery against any party.
- 7.9 Any Product which is incorporated into the structure, machinery or controls of any aircraft, aerial device, watercraft or hovercraft.
- 7.10 Injury to any Worker.

Provided that if the Insured:

- 7.10.1 Is required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited in amount or not) for such Injury; or
- 7.10.2 Is not required to so insure or otherwise fund such liability by reason only that the Injury is to a person who is not a Worker or "employee" within the meaning of the relevant Workers' Compensation Law or the Injury is not an Injury which is subject to such Law.

Then this Policy will respond to the extent that the Insured's liability would not be covered under any such fund, scheme, policy of insurance or self insurance arrangement had the Insured complied with it's obligations pursuant to such Law.

- 7.11
  - 7.11.1 Any Workers' Compensation Law;
  - 7.11.2 The provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination; or
  - 7.11.3 Employment Practices.
- 7.12 Libel, slander and/or other defamation:
  - 7.12.1 Made prior to the commencement of the Period of Insurance;
  - 7.12.2 Made at the Insured's direction or with the Insured's authority or with knowledge of its falsity; or
  - 7.12.3 Related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the Insured.
- 7.13 The loss of use of tangible property which has not been physically damaged or destroyed resulting from:
  - 7.13.1 A delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or





7.13.2 The failure of any Product to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured but this exclusion does not apply to loss of use of other tangible property directly or indirectly caused by, arising out of or in any way connected with or resulting from the sudden and accidental physical damage to or destruction of the Product after such Product has been put to use by any person or organisation other than the Insured.

7.14 Any change in the nature of the Insured's Business which:

7.14.1 Occurred during the currency of this Policy; and

7.14.2 Was known by the Insured, or would have been known by a reasonable person in the circumstances, to be likely to increase the risk of Injury or Damage for which indemnity is provided by this Policy.

For the purposes of this exclusion, where the Insured is a corporate body, the knowledge of any director or officer of the Insured shall be deemed to be the knowledge of the Insured.

7.15 The rendering of or failure to render professional advice or service or any error or omission connected therewith given for a fee by the Insured or any person covered by Clause 3 of this Policy.

Provided that this exclusion does not apply to the rendering of first aid or medical services on the Insured's premises by medical persons employed by the Insured.

7.16 7.16.1 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;

7.16.2 Testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect;

7.16.3 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others; or

7.16.4 Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants.

Provided always that exclusions 7.16.1, 7.16.2 and 7.16.3 shall not apply to liability which is directly caused by a sudden, accidental, instantaneous, unintended, identifiable and unexpected happening which takes place in its entirety at a specific time and place.

The total aggregate liability of LIU for all claims covered in any one Period of Insurance in respect of the proviso above shall not exceed the Limit of Indemnity shown in the Schedule.

7.17 Injury sustained due to the inhalation or ingestion of, or exposure to:

7.17.1 Tobacco or tobacco smoke; or

7.17.2 Any ingredient or additive present in any articles, items or goods which contain or include tobacco.

7.18 7.18.1 Ionising radiations or contamination from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self sustaining process of nuclear fission or fusion; or



7.18.2 Nuclear weapons material.

7.19 And regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

7.19.1 War and military action which includes without limitation the following:

7.19.1.1 War, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;

7.19.1.2 Warlike action by military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

7.19.1.3 Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

7.19.2 Any actual or threatened act of domestic or international Terrorism committed by a person or persons acting:

7.19.2.1 Alone or on behalf of or in connection with any organisation; or

7.19.2.2 With the goal of furthering any political, social, religious, ideological or similar objective.

7.19.3 Action taken to prevent or defend against an act of Terrorism.

If an act of Terrorism involves chemical or biological weapons, this Terrorism exclusion will still apply.

If an act of Terrorism involves nuclear reaction, nuclear radiation or radioactive contamination, this Terrorism exclusion will apply to liabilities that result from such nuclear reaction or nuclear radiation or radioactive contamination in place of Exclusion 7.18.

7.20 The ownership, maintenance, operation, possession or use by or on behalf of the Insured of:

7.20.1 Any aircraft or aerial device;

7.20.2 Any watercraft exceeding 10 metres in length; or

7.20.3 Any hovercraft.

7.21 The Deductible and/or self insured retention shown in the Schedule.

7.22 The erection, demolition, alteration of and/or addition to buildings by or on behalf of the Insured except for contracts not exceeding in cost the sum of AUD500,000 or 10% of the Limit of Indemnity whichever is the lesser.

7.23 Asbestos.

7.24 7.24.1 Claims made and actions instituted within the United States of America or Canada and their respective territories and protectorates, and any other territory coming within the jurisdiction of the courts of the United States of America or Canada; or



7.24.2 Claims and actions to which the laws of the United States of America or Canada and their respective territories and protectorates apply.

Provided that this exclusion does not apply to claims and actions caused by an employee of the Insured who normally resides in Australia while such employee is temporarily travelling on behalf of the Insured outside Australia.

- 7.25 Fines, penalties, punitive damages, exemplary damages, multiplication of compensatory damages, liquidated damages and/or aggravated damages.
- 7.26 Any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of the Insured or any person covered by Clause 3 of this Policy.

## 8 General Conditions

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- 8.1 The Insured shall give written notice to LIU as soon as possible of any claim under this Policy and shall give all such additional information as LIU may require.
- 8.2 No admission, offer, promise, or payment shall be made or given by or on behalf of the Insured without the prior written consent of LIU who shall be entitled but not obligated to take over the conduct in the name of the Insured of the defence or settlement of any claim or to prosecute in the name of the Insured for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as LIU shall require.
- 8.3 This Policy and any endorsements attached to this Policy shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.
- 8.4 The amount shown within the Schedule as a Deductible and/or self insured retention is the first amount for all claims arising out of any one Occurrence which is to be borne by the Insured or any person covered by Clause 3 of this Policy.
- 8.5 LIU may at any time discharge its total liability to the Insured in respect of any one claim or series of claims arising from one Occurrence by paying to or on behalf of the Insured:
  - 8.5.1 The total amount in respect of such claim to which the Insured is entitled to indemnity under this Policy;
  - 8.5.2 The total amount sought by the claimant for such claim; or
  - 8.5.3 The total amount for which such claim can be settled.And in addition to such payment LIU will pay Defence Costs incurred up to the date of payment as provided for by Clause 6 of this Policy.  
Upon such payment, LIU shall relinquish conduct or control of such claim and be under no further liability under this Policy in connection with such claim including but not limited to Defence Costs.
- 8.6 This Policy shall be interpreted in accordance with the laws of Australia and all claims for indemnity under this Policy shall be decided in accordance with those laws. All matters arising from or relating to the construction, operation or interpretation of the Policy shall be submitted to the exclusive jurisdiction of the Australian Courts.





8.7 The Insured must:

- 8.7.1 Exercise reasonable care that only competent Workers and/or employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
- 8.7.2 Take all reasonable precautions to:
  - 8.7.2.1 Prevent Injury and Damage;
  - 8.7.2.2 Prevent the manufacture, sale or supply of defective Products; and
  - 8.7.2.3 Comply and ensure that its Workers, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property;
- 8.7.3 At its own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect; and
- 8.7.4 Assist and co-operate fully and promptly with LIU in the investigation, settlement or defence of any claim or matters relating or in connection thereto.

The amount of any benefit under this Policy for any liability caused or contributed to by the lack of such precautions, measures and compliances shall be reduced by the amount that fairly represents the extent to which LIU's interests have been prejudiced thereby.

- 8.8 Where the premium is provisionally based on the Insured's estimates, the Insured shall keep accurate records and after expiry of the Period of Insurance declare as soon as possible such details as LIU requires and the premium shall be adjusted and any difference paid by or allowed to the Insured as the case may be subject to any minimum premium that may apply.

- 8.9 The Insured may cancel this Policy at any time by giving notice in writing to LIU.

LIU may cancel this Policy at any time where:

- 8.9.1 It is entitled to do so pursuant to the *Insurance Contracts Act 1984* or any amendments thereto;
- 8.9.2 The Insured has failed to notify LIU of any specific act or omission where such notification is required under the terms or conditions of this Policy; or
- 8.9.3 The Insured has acted in contravention of or omitted to act in compliance with any term of this Policy which empowers LIU to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by LIU shall take effect either at the time when another contract of insurance between the Insured and LIU or some other insurer (being a contract that is intended by the Insured to replace this Policy) is entered into or at 4pm on the 3rd business day after the date on which notice was given to the Insured by LIU, whichever is the earlier.



Where the insured comprises more than one person or company, it is agreed that the Insured referred to in the Schedule shall be the agent of each of the other Insured persons or companies or others indemnified by Clause 3 for the purposes of receiving any notice of cancellation pursuant to this General Condition, or any other notice, statement, document or information relating to this Policy.

Where the Insured has a broker, nothing shall restrict LIU's right to notify the broker as agent of the Insured.

- 8.10 Notwithstanding anything else to the contrary in the Policy, whenever coverage provided by this Policy would be in violation of any applicable economic, trade or other sanction or law, such coverage shall be null and void and LIU has no obligation to pay a claim if to do so would breach that sanction or law.
- 8.11 8.11.1 Words importing persons shall include corporations and other legal entities;  
 8.11.2 References in the singular shall be deemed to include the plural and vice versa;  
 8.11.3 Words depicting any gender include reference to all other genders;  
 8.11.4 References to any legislation or subordinate instruments shall refer to such legislation or subordinate instruments as amended from time to time and in force; and  
 8.11.5 Headings have been included for ease of reference and it is understood and agreed that this Policy is not to be construed or interpreted by reference to such headings.
- 8.12 Each Insured agrees that LIU may issue by electronic mail or post any notices required to be given under the Insurance Contracts Act or otherwise.
- 8.13 Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company ("LMIC"), a stock insurance company incorporated in Massachusetts USA. LMIC is an indirect subsidiary of Liberty Mutual Holding Company Inc. ("LMHC"), a Massachusetts USA mutual holding company. NOTICE IS HEREBY GIVEN that the annual meeting of LMHC is held on the second Wednesday in April of each year at ten o'clock in the morning, local time, at LMHC's office at 175 Berkeley Street, Boston, Massachusetts USA. This notice is for members of LMHC only. One becomes a member of LMHC by virtue of being a policyholder of LMIC. Membership rights terminate when one ceases to be a policyholder of LMIC. Members of LMHC may request a copy of LMHC's annual financial statements, which are posted on Liberty Mutual's website at [www.libertymutual.com](http://www.libertymutual.com) by writing to Liberty Mutual Holding Company Inc., 175 Berkeley Street, Boston, Massachusetts 02116.

Signed on behalf of Liberty International Underwriters


For and on behalf of  
 Liberty International Underwriters

8<sup>th</sup> July 2014

Date



Endorsements attaching to and forming part of Policy Number SY-CAS-13-438176

Insured: The Fire Company Pty Ltd

Endorsements effective from: 30<sup>th</sup> April 2014

**Endorsement 1.**

**Contractual Liability Extension for Designated Contracts (Waiver of Subrogation and Indemnity)**

Exclusions 7.7 and 7.8 are deleted and replaced by the following:

- 7.7 Liability assumed under the terms of a contract, agreement or warranty unless and only to the extent that the Insured would have been liable in the absence of such contract, agreement or warranty;
- 7.8 Liability assumed where the Insured may have been able to recover from another party but for an agreement between the Insured and such party where the Insured has waived, released or abandoned any right of recourse or recovery against any party.

Provided that these exclusions shall not apply to the following Designated Contracts:

**DESIGNATED CONTRACTS**

Trademark License Agreement with Brown Jordan International Inc.

**Endorsement 2.**

**Vendors Liability**

1. Clause 3 Indemnity to Others, is extended to include the following:

- 3.5 Any person or organisation designated below in the Schedule of Vendors (herein referred to as "Vendor") but only with respect to the distribution or sale of the Insured's Products provided always that the Vendor shall observe, fulfill and be subject to the terms, conditions, limitations and exclusions of this Policy in so far as they can apply as though they were the Insured.

This endorsement does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

1. Any warranty given by the Vendor;
2. Any liability assumed by the Vendor under contract or agreement which would not have attached in the absence of such contract or agreement;
3. The distribution or sale for a purpose unauthorised by the Insured;
4. Any act, error or omission of the Vendor which changes the condition of any Product;
5. The failure by the Vendor to maintain any Product in merchantable condition;
6. Any failure to make such inspections, adjustments, tests or servicing as the Vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of any Product;





7. Any Product which after distribution or sale by the Insured has been labelled, relabelled, packaged, repackaged or replaced by the Vendor;
8. Any Product which after distribution or sale by the Insured is used as a container, part or ingredient of any other product, thing or substance by or for the Vendor;
9. The demonstration, assembly, installation, servicing or repair of any Product by the Vendor;
10. Any Injury or Damage happening within the Vendor's premises;
11. The liability of any person or organisation from whom the Insured has acquired any Product or any ingredient or part contained in or forming part of such Product or container accompanying or containing such Product; or
12. Any Product design, formula or specification supplied by the Vendor.

2. Schedule Of Vendors

Name

Room and Board Inc

Address

4600 Olson Memorial Highway, Frontage Road  
Minneapolis, MN 55422 USA

Endorsement 3.

USA/Canada Domiciled Operations & Jurisdiction

Definitions

For the avoidance of doubt, the definitions contained in clause 2 of the Policy apply for the purposes of this endorsement and no regard shall be had to specific definitions included for the purpose of other endorsements.

The Policy is amended as set out below but only in respect of:

- a. the Insured's operations domiciled in the United States of America and/or Canada; and
- b. any Product manufactured, distributed or exported within the United States of America and/or Canada.

1. Exclusion 7.16 is deleted and replaced by the following:

- 7.16 7.16.1 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;
- 7.16.2 Testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect;
- 7.16.3 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others; or



7.16.4 Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants.

2. Exclusion 7.24 is deleted and replaced with the following.

7.24 Claims made and actions instituted within the United States of America or Canada and their respective territories and protectorates, and any other territory coming within the jurisdiction of the courts of the United States of America or Canada arising out of or anyway connected with:

7.24.1 any fuel; and/or

7.24.2 any Product intended to hold, store, decant, or transport fuel of any kind.

7.24.3 However, this exclusion shall not apply to any fuel or Product intended to hold, store, decant, or transport fuel of any kind that:

7.24.3.1 was manufactured by or at the direction of the Insured in strict compliance with the engineering specifications expressly approved by LIU; and

7.24.3.2 was fitted with a flame arrester in circumstances where both the flame arrester and the manner of installation were each expressly approved by LIU; and

7.24.3.3 is the subject of definitive evidence showing that the fuel or Product intended to hold, store, decant, or transport fuel was purchased by a third party (not including a retailer or wholesaler) on or after 18<sup>th</sup> June 2014.

LIU's Limit of Indemnity under clause 7.24.3 shall not, in any event, exceed AUD 2,500,000 each and every Occurrence and in the aggregate for any one Period of Insurance.

Furthermore, the Insured is entitled under clause 7.24.3 to a maximum of two (2) Product liability limit reinstatements. Accordingly, LIU will provide two (2) reinstatement/s of AUD 2,500,000 any one Occurrence and in the aggregate, in respect of Product liability if the Limit of Indemnity applying to clause 7.24.3 is exhausted due to the payment of amounts insured under this Policy, but:

a. LIU will only provide such reinstatement/s if cover available under any policy or policies in excess of this Policy has been exhausted; and



- b. provided always that LIU will pay no more than a single Limit of Indemnity in respect of each Occurrence insured under this Policy.

**Endorsement 4.**

**Existing Products Endorsement (Claims Made)**

Retroactive Date: 30<sup>th</sup> April 2014  
Endorsement Period: From: 30<sup>th</sup> April 2014  
To: 30<sup>th</sup> June 2014  
At 4pm local standard time

**1. Notice to the Insured**

This endorsement provides cover on a Claims made and notified basis.

- 1.1 A Claim must be made against the Insured during the Endorsement Period; and  
1.2 The Insured must notify LIU in writing of such Claim during the Endorsement Period.

**2. Insuring Clause**

Subject to the terms and conditions of the Policy and this endorsement, LIU will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation as a result of a Claim both first made against the Insured and notified to LIU during the Endorsement Period for Injury and/or Damage, first happening after the Retroactive Date as a result of an Occurrence in connection with the Insured's Product exported to or distributed within North America.

**3. Definitions**

**3.1 "Claim" means:**

- 3.1.1 Any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counterclaim or third or similar party notice issued against or served upon the Insured; or  
3.1.2 The receipt by the Insured of any written or verbal notice of demand for compensation made by a third party against the Insured.

**3.2 For the purposes of this extension only, Definition 2.12 "Product" is deleted and replaced by the following:**

"Product" means any fuel source or device intended to house, store, decant, or transport fuel which has not been fitted a flame arrester.





3.3 "Retroactive Date" means the date specified in this Endorsement.

3.4 "Endorsement Period" means the period specified in this endorsement.

#### 4. Limit of Indemnity

LIU's liability to pay compensation under this endorsement shall not exceed AUD 2,500,000 any one Claim and in the aggregate during the Endorsement Period.

Further, all payments made under this endorsement will also contribute towards the exhaustion of the aggregate Limit of Indemnity in respect of Products liability shown on the Policy Schedule.

All claims of a series consequent on or attributable to one source or original cause shall be deemed one Claim.

A deductible of AUD 250,000 each and every Claim (costs inclusive) shall be borne by the Insured at their own risk and LIU's liability shall only be in excess of this amount.

#### 5. Defence Costs

LIU agrees to pay all legal costs and expenses incurred with LIU's prior written consent in connection with any Claim for which indemnity is available under this endorsement, provided that such legal costs and expenses are included within the Limit of Indemnity applicable to this endorsement.

Provided that LIU shall not be liable for legal costs and/or expenses where indemnity is not provided by this endorsement.

In the event the Insured is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this endorsement, the Insured and LIU will use their best efforts to agree upon a fair and proper allocation of legal costs and/or expenses or any other amount insured under this endorsement which relate solely to what is covered under this endorsement.

In the event that an agreement cannot be reached, a Senior Counsel (to be mutually agreed upon by LIU and the Insured) shall, as an expert and not an arbitrator, determine a fair and proper allocation. Until the Senior Counsel has made a determination LIU may, in its absolute discretion, pay such legal costs and/or expenses or any other amount insured under this endorsement as it considers appropriate.

#### 6. Exclusions



For the purposes of this endorsement only:

6.1 Exclusion 7.16 is deleted and replaced by the following:

7.16

7.16.1 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;

7.16.2 Testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect;

7.16.3 The actual, alleged or threatened discharge, dispersal, release; seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others; or

7.16.4 Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants.

6.2 Exclusion 7.24 is deleted

6.3 The following additional exclusions apply:

6.3.1 Any Claim arising out of an Injury / Damage first happening prior to the Retroactive Date.

6.3.2 Any Claim made prior to or existing at the inception of this endorsement.

6.3.3 Any Claim in respect of any fact or circumstance known to the Insured prior to or existing at the inception of this endorsement and which the Insured knew or ought reasonably to have known might give rise to a Claim.

6.3.4 Any Claim or circumstances likely to give rise to a Claim stated in the underwriting submission or proposal form, being the basis of the contract.

7. Conditions

7.1 In the event of a Claim, the Insured must give immediate notice in writing to LIU of such Claim and such information as LIU may require to reasonably investigate the Claim and to enable LIU to determine its liability under this Policy.

Nothing contained in these endorsements shall in any way serve to increase the Limit of Indemnity stated in the Schedule.



Other than as amended above, the terms of this Policy shall continue to apply.



For and on behalf of  
Liberty International Underwriters

8<sup>th</sup> July 2014

Date



Ex. 3

William D. Anderson, Bar No. 53071  
 David F. Beach, Bar No. 127135  
 PERRY, JOHNSON, ANDERSON,  
 MILLER & MOSKOWITZ, LLP  
 438 1<sup>st</sup> Street, 4<sup>th</sup> Floor  
 Santa Rosa, California 95401  
 Telephone: (707) 525-8800  
 Facsimile: (707) 545-8242

Attorneys for Plaintiffs  
 MARGRETT LEWIS, individually and as  
 Guardian Ad Litem for NICOLETTE  
 LEWIS and ALEXIS LEWIS; and JEFFREY  
 LEWIS

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF SONOMA

MARGRETT LEWIS, individually and as  
 Guardian Ad Litem for NICOLETTE  
 LEWIS and ALEXIS LEWIS; and  
 JEFFREY LEWIS,

Plaintiffs,

v.

ECOSMART, INC.; THE FIRE  
 COMPANY, PTY, LTD; OUTDOOR  
 ARCHITECTURAL ACCENTS, a  
 California Corporation dba OUTDORA;  
 ESMART GROUP, PTY LIMITED,  
 previously sued as DOE 21; ONE CLICK  
 SHOPS, a California Corporation dba  
 OUTDORA, previously sued as DOE 1;  
 JENSEN METAL PRODUCTS, INC.,  
 previously sued as DOE 26; REAL  
 FLAME COMPANY, Inc., previously  
 sued as DOE 27; CHEMISPHERE  
 CORPORATION, previously sued as DOE  
 11; C.L. SMITH COMPANY, previously  
 sued as DOE 12; and DOES 1 to 50,  
 inclusive,

Defendants.

Case No. SCV-256907

**PLAINTIFFS' SECOND AMENDED  
 COMPLAINT**

**1) PRODUCT LIABILITY DESIGN  
 DEFECT**

**2) PRODUCT LIABILITY  
 MANUFACTURING DEFECT**

**3) NEGLIGENCE**

**4) NEGLIGENT INFLECTION OF  
 EMOTIONAL DISTRESS**

**5) PIERCING THE CORPORATE VEIL;  
 ALTER EGO**

**6) PRODUCT DEFECT**

Judge: CHOUTEAU  
 Dept: 18

Plaintiffs MARGRETT LEWIS, individually, and as Guardian Ad Litem for

NICOLETTE LEWIS and ALEXIS LEWIS; and JEFFREY LEWIS complain of Defendants,

and each of them, as follows:

THE PARTIES

1. Plaintiffs are and at all times relevant herein have been residents of Sonoma, California.

2. Defendants Outdoor Architectural Accents, a California Corporation, doing business as Outdora ("Outdora"), and Does 1 through 10 are the retail sellers of E-NRG (a bioethanol fuel) and are located at 128 West Napa Street, Sonoma, California.

3. Defendant Ecosmart, Inc. ("Ecosmart") is a California corporation wholly owned, operated, managed and controlled by Esmart Group, Pty, Ltd ("Esmart"), also known as The Fire Company Pty, Ltd ("The Fire Company"), and Does 11 through 20, are doing business throughout California bottling, packaging, selling and distributing a bioethanol fuel for both indoor and outdoor use under the name E-NRG ("ethanol product").

4. Defendants The Fire Company, and Does 21 through 25, are Australian business entities that are in the business of designing, manufacturing, selling and distributing indoor and outdoor heating products and flammable fluids made out of denatured alcohol, including a bioethanol fuel known as E-NRG, to California residents, and otherwise doing business in California. E-NRG is intended to be used in indoor and outdoor applications, including stoves, heaters and architectural accents that require the use of E-NRG.

5. Upon filing this Complaint Plaintiffs were ignorant of the true names of Defendants and therefore designated Defendants as Does. Plaintiffs have identified the true name of a defendant to be: Defendant One Click Shops, a California Corporation, doing business as Outdora, as Doe 1. One Click Shops is a retail seller of E-NRG located at 128 West Napa Street, Sonoma, California.

6. Upon filing this Complaint Plaintiffs were ignorant of the true names of Defendants and therefore designated Defendants as Does. Plaintiffs have identified the true names of defendants to be: Jensen Metal Products, Inc., as Doe 26 and Real Flame Company, Inc., as Doe 27, the designers, manufacturers and distributors of the product known as a Real Flame, Model #530 Hampton Firebowl (the "fire pit product") which was defective in design

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1 and manufacture and contributed to the catastrophic burn injuries suffered by plaintiff  
2 Nicolette Lewis.

3 7. Defendant Jensen Metal Products, Inc. and Defendant Real Flame Company,  
4 Inc. are Wisconsin corporations. Defendants Jensen Metal Products, Inc. and Real Flame  
5 Company, Inc.'s principal place of business is 7800 Northwestern Avenue, Racine, WI 53406.  
6 Defendants Jensen Metal Products, Inc., and Real Flame Company, Inc., designed,  
7 manufactured, sold and distributed a fire pit product intended for outdoor use with bioethanol  
8 fuel under the trade name of Real Flame called a Model #530 Hampton Firebowl which was  
9 involved in the catastrophic burn injuries suffered by plaintiff Nicolette Lewis. Defendants  
10 Jensen Metal Products, Inc. and Real Flame Company, Inc. are actively doing business  
11 throughout California by advertising on the internet and using the internet to sell products to  
12 California residents.

13 8. Upon the filing of this Complaint, Plaintiffs were ignorant of the true name of a  
14 Defendant, and therefore designated defendant in the Complaint by the fictitious name of Doe.  
15 Plaintiffs have identified the true name of a defendant to be: Defendant Esmart Group, Pty,  
16 Ltd, previously sued as Doe 21, an Australian business doing business in the United States.  
17 Esmart is the owner of all of the United States patents, including the patent for the defective  
18 product at issue, E-NRG, bioethanol fuel. As of 2007, The Fire Company is the operating  
19 company for Esmart (SEE EXHIBIT A, para. 12). As of 2007, Esmart is the only parent  
20 company of The Fire Company (SEE EXHIBIT B). Esmart is also the new name for The Fire  
21 Company, which changed its name with the Australian Securities & Investment Commission  
22 in 2002. However, Esmart kept the same address previously used for The Fire Company.

23 9. Upon the filing of this Complaint, Plaintiffs were ignorant of the true name of a  
24 Defendant, and therefore designated defendant in the Complaint by the fictitious name of Doe.  
25 Plaintiffs have identified the true name of defendants to be: Defendant Chemisphere  
26 Corporation, previously sued as Doe 11, a Missouri corporation doing business in California,  
27 and Defendant C.L. Smith Company, previously sued as Doe 12, a Missouri corporation doing  
28 business in California. Plaintiffs are informed and believe that Defendants Chemisphere,

1 Corporation, and C.L. Smith Company were key participants in the bottling, packaging,  
2 labeling and shipping of E-NRG to consumers located in California and are legally liable for  
3 product defects in the design and manufacture of E-NRG as key participants in the chain of  
4 distribution of E-NRG in bottles that were not equipped with flame arrestors.

5 10. Plaintiffs do not currently know the names of Does 2 through 10, 13, 20, 22  
6 through 25 and 28, and therefore sue said Defendants by said fictitious names. Plaintiffs  
7 allege that each of these Defendants is in some way liable and at fault for the events and  
8 happenings referred to herein, and each is responsible for the damages incurred by Plaintiffs.  
9 Plaintiffs will amend this Complaint to allege each Defendant's true name and capacity when  
10 ascertained.

11 11. Plaintiffs are informed and believe and thereupon allege that Defendants and  
12 Doe Defendants at all times mentioned herein, were the agents, servants, employees, joint  
13 venturers, co-conspirators, franchises and alter egos of the remaining Defendants, and each of  
14 them, and at all times relevant were acting within the course and scope of such agency,  
15 employment, partnership, joint venture or franchise.

16 **GENERAL ALLEGATIONS**

17 12. In or about April 8, 2014, Plaintiff Margrett Lewis purchased bottles of E-NRG  
18 from Defendant Outdora for use in the fire pit product, at the family home in Sonoma,  
19 California. Prior to June 8, 2014, the Lewis family had used the outdoor fire pit product for  
20 many years without incident.

21 13. On June 8, 2014, Plaintiffs Nicolette Lewis and Alexis Lewis and two friends  
22 were using the outdoor fire pit product to cook s'mores when they thought the fire pit reservoir  
23 was out of fuel and needed to be refilled. Plaintiff Alexis Lewis was pouring a gallon bottle of  
24 E-NRG, denatured alcohol, which Defendants, and each of them, sold and distributed to  
25 Plaintiff Margrett Lewis as set forth above, into the reservoir of the fire pit product when a fire  
26 ball of denatured alcohol exploded out of the bottle covering Plaintiff Nicolette Lewis with  
27 flaming alcohol, causing third degree burns to over 26% of her body, including severe burns to  
28 her face, neck, chest, torso, upper arms, elbows and hands, legs, feet and toes (hereinafter



1 referred to as the "Incident".) As a consequence of the severe burns to her body, Plaintiff  
2 Nicolette Lewis has had to undergo skin harvesting from undamaged skin to graft skin over the  
3 damaged skin in her neck, chest and toe areas, and faces multiple skin grafting procedures in  
4 the future to reconstruct areas severely damaged by fire.

5 14. Plaintiff Alexis Lewis watched in horror as her twin sister was consumed in  
6 flames. She shouted for her mother. Plaintiff Margrett Lewis came running out of the house  
7 and tried to put out the flames which were engulfing her daughter. In the process, Plaintiff  
8 Margrett Lewis suffered burns to her hands and arms. Plaintiff Jeffrey Lewis followed  
9 Plaintiff Margrett Lewis out of the house with a bath towel and was eventually able to smother  
10 the flames consuming his daughter. In the process of smothering the flames Plaintiff Jeffrey  
11 Lewis suffered burns to his leg and the top of his foot.

12 15. The bottle of E-NRG that Plaintiff Alexis Lewis used to fill the fire pit  
13 product's reservoir was manufactured, bottled, sold and distributed without a flame arrestor.  
14 The flame arrestor is an inexpensive mesh designed to fit in the neck of the bottle to prevent  
15 vapor, once ignited, from traveling back up into the bottle and causing an explosive discharge  
16 like the fireball that torched Plaintiff Nicolette Lewis. Defendants, and each of them, were  
17 aware of the need for flame arrestors in their bottles of denatured alcohol for several years  
18 prior to the subject accident. For economic reasons Defendants, and each of them, did not  
19 manufacture, distribute or sell their bottles with flame arrestors nor did they attempt to recall  
20 bottles without flame arrestors which had been sold or distributed into the chain of commerce  
21 prior to the date of sale of E-NRG to plaintiff Margrett Lewis.

22 16. After the date of manufacture and/or bottling of the subject bottle of E-NRG,  
23 Defendants, and each of them, recognizing the extreme hazards to consumers who used their  
24 product in a reasonably foreseeable manner, redesigned the bottle and caps to allow for a flame  
25 arrestor to be placed in the neck of the bottle during manufacture, and placed a warning on the  
26 label of the bottle warning consumers of the hazard of removing the flame arrestor.

27 17. Defendants, and each of them, were made aware that other consumers of E-  
28 NRG had been consumed by fire in the same way that Plaintiff Nicolette Lewis was injured,



1 having defended several lawsuits where fire from alcohol vapors ignited bottles of their  
 2 product causing severe burns. Defendants were also aware of the dangerous and highly  
 3 flammable nature of their product and knew that other manufacturers in their industry had the  
 4 same problems with bottles of denatured alcohol sold without flame arrestors prior to the  
 5 incident giving rise to this action. Plaintiff Nicolette Lewis suffered severe emotional and  
 6 physical injuries and her twin sister, Plaintiff Alexis Lewis, has suffered severe emotional  
 7 trauma which could have been avoided had defendants, and each of them, acted reasonably to  
 8 modify their product to include flame arrestors in the years preceding the injury to Plaintiff  
 9 Nicolette Lewis.

#### 10 FIRST CAUSE OF ACTION

#### 11 (Product Liability Design Defect- Against Ecosmart, The Fire Company, Esmart, 12 Outdora, Chemisphere and C.L. Smith)

13 18. Plaintiffs incorporate by reference each of the allegations set forth in  
 14 paragraphs 1 through 17 above.

15 19. On or about June 8, 2014, Plaintiff Nicolette Lewis and Plaintiff Alexis Lewis  
 16 were using the fire pit product in a reasonably foreseeable manner when a bottle of E-NRG  
 17 bioethanol fuel erupted in flames, spewing burning ethanol on Plaintiff Nicolette Lewis  
 18 causing severe third degree burns over 26% of her body and causing permanent disfiguring  
 19 injuries to her face, neck, chest, torso, upper arms, elbows and hands, legs, feet and toes.

20 20. At the time of the Incident, Plaintiff Nicolette Lewis and Plaintiff Alexis Lewis  
 21 were using the bottle of E-NRG as intended, to fill the reservoir of the fire pit product, and in a  
 22 manner Defendants could and should reasonably have expected.

23 21. The bottles of E-NRG purchased by Plaintiff Margrett Lewis did not have  
 24 flame arrestors and there was no modification, change or abuse of the bottle prior to the  
 25 Incident.

26 22. The Incident and the burn injuries to Plaintiff Nicolette Lewis, Plaintiff  
 27 Margrett Lewis and Plaintiff Jeffrey Lewis were due to defects in the bottle as a result of a

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1 design that did not include a flame arrestor. A flame arrestor would have prevented the  
2 Incident from occurring.

3 23. As a further legal cause of the defect in the bottle design which led to the  
4 Incident, Plaintiff Nicolette Lewis suffered permanent and disfiguring injuries which include  
5 third degree burns to her face, neck, chest, torso, upper arms, elbows and hands, legs, feet and  
6 toes.

7 24. As a further proximate and legal cause of the defect in the bottle of E-NRG  
8 involved in the Incident, Plaintiff Nicolette Lewis and her parents were required to incur  
9 expenses for medical care and treatment for her physical and emotional injuries, and will incur  
10 in the future medical care to reconstruct the burn sites and the donor sites which have  
11 hypertrophic scarring with keloid components in some areas. Plaintiffs pray leave to amend  
12 this Complaint when the full extent of Plaintiff Nicolette Lewis' medical treatment and billing  
13 are finally determined.

14 25. Plaintiff Nicolette Lewis and her parents have suffered special damages  
15 (economic) in excess of the jurisdictional minimum of this Court and have incurred general  
16 damages (non-economic) in excess of the jurisdictional minimum of this Court.

17 26. Defendants, and each of them, acted with fraud, oppression and malice and with  
18 conscious disregard for the rights and safety of Plaintiffs by marketing and selling bottles of E-  
19 NRG biofuel without flame arrestors when they knew that consumers throughout the United  
20 States were suffering burns due to the ignition of vapors from their bottles manufactured  
21 without flame arrestors. Defendants were aware of multiple incidents where bottles of E-NRG  
22 exploded in the same way as in the Incident and were aware that some of their competitors  
23 were having the same problem yet continued to manufacture, sell and distribute bottles without  
24 flame arrestors.

25 Wherefore, Plaintiff Nicolette Lewis, Plaintiff Margrett Lewis and Plaintiff Jeffrey  
26 Lewis pray for judgment against Defendants, and each of them, as hereinafter set forth.

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28 ///



SECOND CAUSE OF ACTION

(Product Liability Manufacturing Defect- Against Ecosmart, The Fire Company,  
Esmart, Outdora, Chemisphere, and C.L. Smith)

27. Plaintiffs incorporate by reference each of the allegations set forth in paragraphs 1 through 26 above.

28. At the time of the Incident, the bottle of E-NRG Plaintiffs were using was defective in manufacture in that it was manufactured and sold without a flame arrestor. The lack of a flame arrestor is not something that an ordinary consumer using the product in a reasonably foreseeable manner would notice and would not appreciate the risk of harm of using the bottle. The lack of a flame arrestor is not something that would likely be detected by consumers.

29. At all times relevant hereto, Plaintiffs were using the bottle of E-NRG in filling the reservoir of the fire pit product in a reasonably foreseeable manner and as reasonably expected by Defendants, and each of them.

30. Due to the manufacturing defect of the subject bottle of E-NRG, the bottle expelled a fireball of burning alcohol on Plaintiff Nicolette Lewis causing severe and permanent physical and emotional injuries as set forth above, making Defendants, and each of them, strictly liable for Plaintiff Nicolette Lewis, Plaintiff Margrett Lewis and Plaintiff Jeffry Lewis' injuries.

31. Due to the manufacturing defect in the subject bottle of E-NRG, Plaintiffs have incurred and will continue to incur medical expense to treat their physical and emotional injuries. The exact amount of Plaintiffs' medical expenses is unknown and Plaintiffs will seek to amend this Complaint when the full extent of medical costs has been ascertained.

Wherefore, Plaintiff Nicolette, Plaintiff Margrett Lewis and Plaintiff Jeffrey Lewis pray for judgment against Defendants, and each of them, as hereinafter set forth.

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THIRD CAUSE OF ACTION

(Negligence- Against Ecosmart, The Fire Company, Esmart, Outdora,  
Chemisphere, and C.L. Smith)

32. Plaintiffs incorporate by reference each of the allegations set forth in paragraphs 1 through 31 above.

33. At all times relevant hereto, Defendants, and each of them, knew or should have known with the exercise of reasonable care that manufacturing, distributing or selling denatured alcohol in a plastic bottle without a flame arrestor was likely to cause injury to consumers using their products.

34. At all times relevant to this action, Defendants, and each of them, were negligent in the design, manufacture, testing, distribution and sale of E-NRG, denatured alcohol, in bottles equipped without flame arrestors, which made these bottles unreasonably dangerous when used by consumers in a reasonably foreseeable manner.

35. At no time did Defendants, and each of them, advise or make it known to consumers of their product that their product was not equipped with flame arrestors and that vapor from their bottles could cause the bottles to explode into flames.

36. Due to the negligence of Defendants, and each of them, Plaintiff Nicolette Lewis suffered devastating burn injuries to over 26% of her body resulting in permanent disfigurement. Plaintiff Margrett Lewis suffered burns to her arms try to put out the flames consuming her daughter. Plaintiff Jeffrey Lewis suffered burns to his leg and the top of his foot extinguishing the flames on his daughter.

37. Due to the negligence of Defendants, and each of them, Plaintiff Nicolette Lewis and her parents incurred medical expenses to treat her severe burns and will incur future medical expenses to reconstruct the areas burned and the areas where skin grafts were taken, the exact amount is unknown at this time and Plaintiffs will pray for leave to amend the Complaint when the full medical specials are determined.

Wherefore, Plaintiff Nicolette Lewis, Plaintiff Margrett Lewis and Plaintiff Jeffrey Lewis pray for judgment against Defendants, and each of them, as hereinafter set forth.

**FOURTH CAUSE OF ACTION**

(Negligent Infliction of Emotional Distress- Against Ecosmart, Esmart, The Fire  
Company, Outdora, Chemisphere, and C.L. Smith)

38. Plaintiffs incorporate by reference each of the allegations set forth in paragraphs 1 through 37 above.

39. At all times relevant hereto Defendants, and each of them, were negligent in the design, manufacture, distribution and sale of plastic containers filled with denatured alcohol and sold under the name of E-NRG, which proximately and legally caused severe burn injuries to Plaintiff Nicolette Lewis in the Incident described above.

40. Plaintiff Alexis Lewis, the twin sister of Plaintiff Nicolette Lewis, saw her sister covered in flaming alcohol as it exploded from the bottle of E-NRG, heard her scream and cry and saw her flesh being consumed. Plaintiff Margrett Lewis and Plaintiff Jeffrey Lewis came to the rescue of Plaintiff Nicolette Lewis and saw her flesh burning, smelled her flesh burning, heard her screams of agony and helped to put out the flames. They saw their beautiful daughter being consumed and disfigured by flames.

41. Plaintiffs suffered extreme emotional distress due to the negligence of Defendants, and each of them, and have suffered nightmares, anxiety and depression resulting in problems sleeping and engaging in their normal activities of daily living.

42. Plaintiffs' emotional distress has been so severe that they have required medical and psychiatric treatment to deal with the emotional trauma of witnessing the Incident. The past and future medical and psychiatric treatment is unknown at this time and Plaintiffs will seek leave to amend the Complaint when the costs have finally been determined.

Wherefore Plaintiff Alexis Lewis, Plaintiff Margrett Lewis and Plaintiff Jeffrey Lewis pray for judgment against Defendants, and each of them, as hereinafter set forth.

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FIFTH CAUSE OF ACTION

(Piercing the Corporate Veil: Alter Ego - Against Esmart, The Fire Company, and  
Ecosmart)

43. Plaintiffs incorporate by reference each of the allegations set forth in the paragraphs 1 through 42 above.

44. The Fire Company (also known as Esmart Group, Pty, Ltd) acted as the alter ego of Ecosmart, Inc. Both The Fire Company and Ecosmart, Inc. owed a duty to Plaintiffs to protect them from their faulty product, E-NRG bioethanol fuel.

45. There exists, and at all times herein mentioned there existed, a unity of interest and ownership between The Fire Company and Ecosmart, such that any individuality and separateness between them have ceased, and The Fire Company is the alter ego of Ecosmart.

46. Ecosmart is wholly owned, operated, managed and controlled by Esmart, aka The Fire Company. Ecosmart and The Fire Company are participating in a common venture with respect to manufacture and distribution of bioethanol fuel. They tend to benefit jointly from transactions entered into by one of them.

47. Ecosmart, Inc., is the main brand of The Fire Company. Both The Fire Company and Ecosmart's websites are cross linked and they share the same Head Office.

48. Ecosmart's Australian patents are registered to The Fire Company. Ecosmart's United States patents are registered at the same mailing address as is used by The Fire Company.

49. Ecosmart and The Fire Company share common directors and officers. Ecosmart's Statement of Information provided to the California Secretary of State lists Stephane Thomas as a chief executive of both businesses: he is the Secretary, Director and Chief Financial Officer of Ecosmart (EXHIBIT C) and the Chief Executive Operator for The Fire Company (EXHIBIT D).

50. Ecosmart, Inc. and the Fire Company have pooled their assets. Ecosmart has recently claimed that it has no insurance and no assets. Ecosmart has failed to adequately capitalize itself.





1 and can be used both indoors and outdoors. Bioethanol flames are not always visible,  
2 especially as the fuel in the reservoir is depleted.

3 56. The subject fire pit product has decorative rock which both surrounds the fuel  
4 reservoir and is spread on top of a sliding plate which is intended to be used to open and close  
5 the fuel reservoir for the fire pit. The fire pit product is defective in design because the rocks,  
6 in combination with the height of the reservoir, make it difficult to move and close the sliding  
7 plate which shuts off air and extinguishes any fire in the reservoir. The hand held piece called  
8 a "scraper tool" is inadequate to move the "damper" to ensure the fire is completely out before  
9 new fuel is added to the reservoir.

10 57. Due to the design defects in the fire pit product, and the damping mechanism,  
11 there was a small residual flame in the reservoir which was not readily observable to Plaintiffs,  
12 who thought the fire was out and that it was safe to refuel, which was the ignition source for  
13 the vapor fire and explosion which caused catastrophic burn injuries to Plaintiff Nicolette  
14 Lewis.

15 58. The subject fire product was also defective in design in that there were no  
16 warnings on the pit or in the packaging material that residual ethanol flames might be present,  
17 but not visible, and that the reservoir should be completely closed before refueling to ensure all  
18 flames are out before refueling and failed to warn that vapor fires could occur if ethanol fuel  
19 was poured from a bottle which was not equipped with a flame arrestor.

20 59. The Incident and burn injuries to Plaintiffs were due to the defect in design of  
21 the fire pit product as set forth above and due to the failure to warn that refueling of the fire pit  
22 with bottles which were not equipped with flame arrestors could lead to an explosive vapor  
23 fire, and the risk of severe burn injuries if the reservoir was not completely closed each time  
24 before adding fuel to ensure all flames were extinguished.

25 60. As a further legal cause of the fire pit product design and failure to warn which  
26 led to the Incident, Plaintiff Nicolette Lewis suffered permanent and disfiguring injuries which  
27 include third degree burns to her face, neck, chest, torso, upper arms, elbows, hands, legs, face  
28 and toes.



### Plaintiffs' Second Amended Complaint



1 nearly depleted, and the design of the reservoir. The configuration of the fire pit product's  
2 reservoir, with the sliding plate which sits on top of the reservoir, conceals the flame making it  
3 difficult to see there is flame in the reservoir, thus, creating a risk of explosive discharge of  
4 ethanol should a consumer attempt to pour ethanol into the reservoir.

5 65. Defendants, and each of them, knew or should have known that the  
6 configuration of their product, coupled with the explosive nature of ethanol when poured from  
7 a container without a flame arrestor, created an unreasonably dangerous condition likely to  
8 cause serious injury to consumers of their fire pit product. Defendants, and each of them, were  
9 negligent in the design, manufacturing, marketing, sale and distribution of their product and as  
10 a consequence of their negligence Plaintiff Nicolette Lewis suffered devastating burn injuries  
11 to over 26% of her body resulting in permanent disfigurement. Plaintiff Margrett Lewis and  
12 Plaintiff Jeffrey Lewis suffered burns trying to extinguish flames consuming their daughter.

13 66. Due to the negligence of Defendants, and each of them, Plaintiff Nicolette  
14 Lewis and her parents incurred medical expenses to treat her severe burns and will incur future  
15 medical expenses to reconstruct the areas burned and the areas where skin grafts were taken,  
16 the exact amount is unknown at this time and Plaintiffs will pray for leave to amend the  
17 Complaint when the full medical specials are determined.

18 Wherefore, Plaintiff Nicolette Lewis and Plaintiff Margrett Lewis and Plaintiff Jeffrey  
19 Lewis pray for judgment against Defendants, and each of them, as hereinafter set forth.

20 **EIGHTH CAUSE OF ACTION**

21 **(Negligent Infliction of Emotional Distress against Jensen Metal Products, Inc.,**  
22 **Real Flame Company, Inc.)**

23 67. Plaintiffs incorporate by reference each of the allegations set forth in  
24 paragraphs 1 through 17 and 54 through 66 above.

25 68. At all times relevant hereto, Defendants, and each of them, were negligent in  
26 the design, manufacture, marketing, sale and distribution of their product which proximately  
27 and legally caused severe burn injuries to Plaintiff Nicolette Lewis during the Incident  
28 described above.

69. Plaintiff Alexis Lewis, the twin sister of Plaintiff Nicolette Lewis, saw her sister covered in flaming alcohol as it exploded from the bottle of E-NRG, heard her scream and cry and saw flesh being consumed by flame. Plaintiff Margrett Lewis and Plaintiff Jeffrey Lewis came to the rescue of Nicolette Lewis and saw her flesh burning, smelled her flesh burning, and heard screams of agony as they attempted to put out the flames. They saw their beautiful daughter being consumed and disguised by burning ethanol.

70. Plaintiffs suffered extreme emotional distress due to the negligence of Defendants, and each of them, and have suffered nightmares, flashbacks, anxiety and depression resulting in problems sleeping and engaging in the normal activities of daily living.

71. Plaintiffs' emotional distress has been so severe that they have medical and psychiatric care and counseling to deal with the emotional trauma of witnessing the Incident. The past and future medical, psychiatric and psychological counseling is unknown at this time and Plaintiffs will seek leave to amend the Complaint when the costs have been fully determined.

Wherefore, Plaintiff Alexis Lewis, Plaintiff Margrett Lewis and Plaintiff Jeffrey Lewis pray for judgment against Defendants, and each of them, as hereinafter set forth.

#### PRAYER

Wherefore, Plaintiffs pray for judgment as follows:

1. An award of general damages for each Plaintiff according to proof;
2. An award of special damages for each Plaintiff according to proof;
3. An award of post-judgment interest at the legal rate;
4. An award of costs of suit;
5. An award of punitive damages in an amount to punish and deter as to Defendants Ecosmart, INC., The Fire Company, PTY, LTD, and Esmart Group, PTY Limited;

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6. All such other and further relief as the Court determines is just and proper.

PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ, LLP

DATED: January 12, 2016

By: 

WILLIAM D. ANDERSON  
Attorneys for Plaintiffs  
MARGRETT LEWIS, individually and as  
Guardian Ad Litem for NICOLETTE  
LEWIS and ALEXIS LEWIS; and  
JEFFREY LEWIS

PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ LLP



EXHIBIT A

**GREENBERG TRAURIG, LLP**

ATTORNEYS AT LAW

SUITE 700

2375 EAST CAMELBACK ROAD

PHOENIX, ARIZONA 85016

(602) 445-8000

John Alan Doran, SBN 012112, DoranJ@gtlaw.com

Kimberly A. Warshawsky, SBN 022083, WarshawskyK@gtlaw.com

Laura Sixkiller, SBN 022014, SixkillerL@gtlaw.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

ESMART GROUP PTY LIMITED and THE  
FIRE COMPANY PTY LIMITED,

Plaintiffs,

v.

MIKE GROUT,

Defendant.

No.

**COMPLAINT**

**(Patent Infringement)**

**(Jury Trial Demanded)**

Plaintiffs Esmart Group Pty Limited and The Fire Company Pty Limited, by and through their attorneys, for their Complaint against Defendant Mike Grout, on information and belief, allege as follows:

**THE PARTIES**

1. Plaintiff Esmart Group Pty Limited ("ESMART") is a company existing under the laws of the country of Australia, with its principal place of business at 9/5 Vuko Place, Warriewood NSW 2102, Australia.

2. Plaintiff The Fire Company Pty Limited ("FIRE COMPANY") is a company existing under the laws of the country of Australia, with its principal place of business at 9/5 Vuko Place, Warriewood NSW 2102, Australia.

3. Upon information and belief, Defendant Mike Grout is a citizen of Arizona and resides at 4632 North 40th Street, Phoenix, Arizona 85018.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.*

5. This Court has subject matter jurisdiction over this action pursuant to the laws of the United States governing actions related to patents, 28 U.S.C. §§ 1331 and 1338(a).

6. Defendant conducts business in this district. This Court therefore has general personal jurisdiction over Defendant.

7. Defendant has committed acts of patent infringement in this district.

8. Upon information and belief, Defendant continues to commit acts of patent infringement in this district.

9. This Court also has specific personal jurisdiction over Defendant.

10. Venue in this judicial district is proper under 28 U.S.C. §§ 1391 (b), (c) and (d) and 1400(b) because Defendant resides in this judicial district, has committed acts of patent infringement in this district, and has conducted business in this district.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

11. Plaintiffs are engaged in, among other things, the development, manufacture, and sale of alternative fuel fireplaces that do not require flues. Homeowners, housing developers, and restaurants are common purchasers of these products.

12. On October 30, 2007, U.S. Patent No. 7,287,979 ("the '979 Patent") was duly and legally issued by the United States Patent and Trademark Office. The '979 Patent was assigned to Plaintiff ESMART, who is the owner of all right, title, and interest in and to the '979 Patent, including the right to sue for infringement and recover damages

LAW OFFICES  
GREENBERG TRAURIG  
2375 EAST CAMELBACK ROAD, SUITE 700  
PHOENIX, ARIZONA 85016  
(602) 445-8900



1 resulting therefrom. Plaintiff FIRE COMPANY is the operating company for Plaintiff  
2 ESMART.

3 13. A copy of the '979 Patent is attached hereto as Exhibit A and is made a part  
4 of this Complaint.

5 14. Plaintiffs are and have been selling, within this judicial district, products in  
6 accordance with the '979 Patent.

7 15. Upon information and belief, Defendant is and has been selling products  
8 embodying the invention claimed in the '979 Patent within the United States of America,  
9 including within this judicial district.

10 16. At all relevant times, Defendant has been and continues to be the sole  
11 member and owner of the Arizona limited liability company, Innovations M2, LLC  
12 ("INNOVATIONS"), having a principal place of business at 4632 North 40th Street,  
13 Phoenix, Arizona, 85018.

14 17. As the sole member of INNOVATIONS, Defendant has operated  
15 INNOVATIONS out of his personal residence and exercised total control over all of  
16 INNOVATIONS' activities.

#### 17 COUNT I

#### 18 Infringement of United States Patent No. 7,287,979 19 (35 U.S.C. §§ 1, *et seq.*)

20 18. Plaintiffs re-allege and incorporate by reference each of the allegations of  
21 Paragraphs 1 through 17 as if fully set forth herein.

22 19. At all relevant times, INNOVATIONS functioned as Defendant's alter ego  
23 as Defendant completely dominated and exercised total control over INNOVATIONS'  
24 policies and business practices.

25 20. Among the policies and business practices implemented by Defendant were  
26 INNOVATIONS' infringement of the '979 Patent.

23. Because Defendant is the alter ego of INNOVATIONS, he may be held directly, jointly and severally liable for INNOVATIONS' infringement of the '979 Patent.

25. Upon information and belief, all of Defendant's acts were and are intentional and willful.

26. Defendant's acts have damaged Plaintiffs and, unless enjoined, will continue to damage and cause irreparable injury to Plaintiffs.

### RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request judgment against Defendant as follows:

A. A Judgment that Defendant is directly and personally liable for INNOVATIONS' infringing of one or more of the claims of the '979 Patent in violation of 35 U.S.C. § 271(a);

B. A temporary, preliminary and permanent injunction enjoining Defendant, his agents, employees, licensees, and all those in privity with him, including INNOVATIONS, from infringing the '979 Patent;

C. An award of damages against Defendant sufficient to compensate Plaintiffs for the injury caused by INNOVATIONS' infringement of the '979 Patent;

1 D. An award trebling the damages pursuant to 35 U.S.C. § 284 based upon  
2 INNOVATIONS' willful infringement of the '979 Patent;

3 E. An assessment of costs, including reasonable attorneys fees pursuant to 35  
4 U.S.C. § 285, and prejudgment interest against Defendant; and

5 F. Such other and further relief as this Court may deem just and proper.

6 RESPECTFULLY SUBMITTED this 7th day of April, 2008.

7 GREENBERG TRAURIG, LLP

8 By: /s/ Kimberly A. Warshawsky

9 John Alan Doran

Kimberly A. Warshawsky

Laura Sixkiller

Attorneys for Plaintiffs

10 Of counsel:

11 Angelo J. Bufalino, Esq.

12 Michael J. Turgeon, Esq.

13 Robert S. Rigg, Esq.

Vedder Price P.C.

222 N. LaSalle St., Suite 2600

Chicago, Illinois 60601-1003

(312) 609-7500 - Tel

(312) 609-5005 - Fax

LAW OFFICES  
GREENBERG TRAURIG  
2375 EAST CAMELBACK ROAD, SUITE 700  
PHOENIX, ARIZONA 85016  
(602) 445-8000



EXHIBIT B

Case 1:07-cv-06137 Document 11 Filed 12/07/2007 Page 1 of 3

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ESMART GROUP PTY LIMITED, and  
THE FIRE COMPANY PTY LIMITED,

Plaintiffs,

v.

INNOVATIONS M2, LLC, and  
BRAD BLAYLOCK,

Defendant.

Court File No.: 07-CV-06137

Judge Suzanne B. Conlon

Magistrate Judge Nolan

**NOTIFICATION OF AFFILIATES**  
**DISCLOSURE STATEMENT PURSUANT TO LOCAL RULE 3.2**

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure and Local Rule 3.2, Plaintiffs, Esmart Group Pty Limited ("Esmart") and The Fire Company Pty Limited ("Fire Co."), state that: (1) Esmart is an Australian private company, it has no parent company or corporation and no publicly-held company owns 10% or more of Esmart's ownership interests; and (2) Fire Co. is an Australian private company, Esmart is its only parent company and no publicly-held company owns 10% or more of Fire Co.'s ownership interests.

Respectfully submitted,

ESMART GROUP PTY LIMITED  
THE FIRE COMPANY PTY LIMITED

By: s/ Michael J. Turgeon  
One of Their Attorneys

Case 1:07-cv-06137 Document 11 Filed 12/07/2007 Page 2 of 3

Angelo J. Bufalino, Esq.  
Robert S. Rigg, Esq.  
Michael J. Turgeon, Esq.  
VEDDER, PRICE, KAUFMAN & KAMMHOLZ, P.C.  
222 North LaSalle Street, Suite 2600  
Chicago, IL 60601-1003  
Telephone: 312/609-7500  
Facsimile: 312/609-5005

Dated: December 7, 2007



Case 1:07-cv-06137 Document 11 Filed 12/07/2007 Page 3 of 3

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2007, I electronically filed the foregoing NOTIFICATION OF AFFILIATES DISCLOSURE STATEMENT PURSUANT TO LOCAL RULE 3.2 with the Clerk of the Court using the CM/ECF system, and will send notification of such filing to the following via Federal Express:

Gary Rogers, Solicitor  
Blueprint Law  
Suite 602  
Level 6  
Westfield Towers  
100 William Street  
Sydney, New South Wales 2011  
AUSTRALIA

s/ Michael J. Turgeon

EXHIBIT C

11-658078



# State of California Secretary of State

S

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## Statement of Information

(Domestic Stock and Agricultural Cooperative Corporations)

FEES (Filing and Disclosure): \$25.00. If amendment, see instructions.  
IMPORTANT - READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

**FILED**  
In the office of the Secretary of State  
of the State of California

FEB 24 2011

## 1. CORPORATE NAME

EcoSmart, Inc.  
C3017592

A

This Space for Filing Use Only

## Due Date:

Complete Addresses for the Following (Do not abbreviate the name of the city. Items 2 and 3 cannot be P.O. Boxes.)

2. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE	CITY	STATE	ZIP CODE
3641 HOLDREGE AVE., SUITE B	LOS ANGELES	CA	90016
3. STREET ADDRESS OF PRINCIPAL BUSINESS IN CALIFORNIA, IF ANY	CITY	STATE	ZIP CODE
3641 HOLDREGE AVE., SUITE B	LOS ANGELES	CA	90016
4. MAILING ADDRESS OF THE CORPORATION, IF DIFFERENT THAN ITEM 2	CITY	STATE	ZIP CODE

Names and Complete Addresses of the Following Officers (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

5. CHIEF EXECUTIVE OFFICER/	ADDRESS	CITY	STATE	ZIP CODE
ALEXANDER EBURNE	3641 HOLDREGE AVE., SUITE B	LOS ANGELES	CA	90016
6. SECRETARY	ADDRESS	CITY	STATE	ZIP CODE
STEPHANE THOMAS	3641 HOLDREGE AVE., SUITE B	LOS ANGELES	CA	90016
7. CHIEF FINANCIAL OFFICER/	ADDRESS	CITY	STATE	ZIP CODE
STEPHANE THOMAS	3641 HOLDREGE AVE., SUITE B	LOS ANGELES	CA	90016

Names and Complete Addresses of All Directors, Including Directors Who are Also Officers (The corporation must have at least one director. Attach additional pages, if necessary.)

8. NAME	ADDRESS	CITY	STATE	ZIP CODE
STEPHANE THOMAS	3641 HOLDREGE AVE., SUITE B	LOS ANGELES	CA	90016
9. NAME	ADDRESS	CITY	STATE	ZIP CODE
10. NAME	ADDRESS	CITY	STATE	ZIP CODE

## 11. NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY:

Agent for Service of Process (If the agent is an individual, the agent must reside in California and Item 13 must be completed with a California street address (a P.O. Box is not acceptable). If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 13 must be left blank.)

## 12. NAME OF AGENT FOR SERVICE OF PROCESS

A and A Companies, Inc.

C 2399516

13. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL	CITY	STATE	ZIP CODE
		CA	

## Type of Business

14. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION  
Investment business

15. BY SUBMITTING THIS STATEMENT OF INFORMATION TO THE CALIFORNIA SECRETARY OF STATE, THE CORPORATION CERTIFIES THE INFORMATION CONTAINED HEREIN, INCLUDING ANY ATTACHMENTS, IS TRUE AND CORRECT.

02/21/2011  
DATE

Michael J. Minkus

TYPE/PRINT NAME OF PERSON COMPLETING FORM

Agent

TITLE

*[Signature]*  
SIGNATURE





# State of California

## Secretary of State

S

### Statement of Information

(Domestic Stock and Agricultural Cooperative Corporations)

FEES (Filing and Disclosure): \$25.00.

If this is an amendment, see instructions.

IMPORTANT -- READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

EU97696

FILED

In the office of the Secretary of State  
of the State of California

NOV-06 2013

1. CORPORATE NAME

ECOSMART, INC.

2. CALIFORNIA CORPORATE NUMBER

C3017592

This Space for Filing Use Only

No Change Statement (Not applicable if agent address of record is a P.O. Box address. See instructions.)

3. If there have been any changes to the information contained in the last Statement of Information filed with the California Secretary of State, or no statement of information has been previously filed, this form must be completed in its entirety.

☒ If there has been no change in any of the information contained in the last Statement of Information filed with the California Secretary of State, check the box and proceed to Item 17.

Complete Addresses for the Following (Do not abbreviate the name of the city. Items 4 and 5 cannot be P.O. Boxes.)

4. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE CITY STATE ZIP CODE

5. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY CITY STATE ZIP CODE

6. MAILING ADDRESS OF CORPORATION, IF DIFFERENT THAN ITEM 4 CITY STATE ZIP CODE

Names and Complete Addresses of the Following Officers (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

7. CHIEF EXECUTIVE OFFICER/ ADDRESS CITY STATE ZIP CODE

8. SECRETARY ADDRESS CITY STATE ZIP CODE

9. CHIEF FINANCIAL OFFICER/ ADDRESS CITY STATE ZIP CODE

Names and Complete Addresses of All Directors, Including Directors Who are Also Officers (The corporation must have at least one director. Attach additional pages, if necessary.)

10. NAME ADDRESS CITY STATE ZIP CODE

11. NAME ADDRESS CITY STATE ZIP CODE

12. NAME ADDRESS CITY STATE ZIP CODE

13. NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY:

Agent for Service of Process If the agent is an individual, the agent must reside in California and Item 15 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 15 must be left blank.

14. NAME OF AGENT FOR SERVICE OF PROCESS

15. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL CITY STATE ZIP CODE

### Type of Business

16. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION

17. BY SUBMITTING THIS STATEMENT OF INFORMATION TO THE CALIFORNIA SECRETARY OF STATE, THE CORPORATION CERTIFIES THE INFORMATION CONTAINED HEREIN, INCLUDING ANY ATTACHMENTS, IS TRUE AND CORRECT.

11/06/2013

GRACE REGINA HERRERA

OFFICE MANAGER

DATE

TYPE/PRINT NAME OF PERSON COMPLETING FORM

TITLE

SIGNATURE

SI-200 (REV 01/2013)

APPROVED BY SECRETARY OF STATE

EXHIBIT D

## Current &amp; Historical Company Extract

ESMART GROUP PTY LIMITED

ACN 099 603 568

## Organisation Details

Document Number

## Current Organisation Details

Name: ESMART GROUP PTY LIMITED 022554280  
 ACN: 099 603 568  
 ABN: 14099603568  
 Registered in: New South Wales  
 Registration date: 15/02/2002  
 Next review date: 15/02/2016  
 Name start date: 30/11/2005  
 Status: Registered  
 Company type: Australian Proprietary Company  
 Class: Limited By Shares  
 Subclass: Proprietary Company

## Previous Organisation Details from 15/02/2002 to 29/11/2005

Name: THE FIRE COMPANY PTY LTD 017783466  
 Name start: 15/02/2002  
 Status: Registered  
 Company type: Australian Proprietary Company  
 Class: Limited By Shares  
 Subclass: Proprietary Company

## Address Details

Document Number

## Current

Registered address: THE FIRE COMPANY PTY LIMITED, 'Showroom 3 & 4', 40-42 O'Riordan Street, ALEXANDRIA NSW 2015 1F0386224  
 Start date: 20/03/2012  
 Principal Place Of Business address: 'Showroom 3 & 4', 40-42 O'Riordan Street, ALEXANDRIA NSW 2015 1F0386224  
 Start date: 21/02/2012

## Historical

Registered address: THE FIRE COMPANY PTY LIMITED, 10 Apollo Street, WARRIEWOOD NSW 2102 025668834  
 Start date: 31/07/2009  
 Cease date: 19/03/2012  
 Registered address: THE FIRE COMPANY PTY LIMITED, 10 Apollo Street, WARRIEWOOD NSW 2102 024905714  
 Start date: 30/07/2008  
 Cease date: 30/07/2009  
 Registered address: Unit 9, 5 Vuko Place, WARRIEWOOD NSW 2102 1F0117218  
 Start date: 03/07/2006  
 Cease date: 29/07/2008  
 Registered address: Unit 10, 14 Polo Avenue, MONA VALE NSW 2103 020416661  
 Start date: 28/06/2004  
 Cease date: 02/07/2006



## Current &amp; Historical Company Extract

ESMART GROUP PTY LIMITED

ACN 099 603 568

Registered address: THE ALLEN HALL PARTNERSHIP, Level 3, 685 Pittwater Road, DEE WHY NSW 2099 017783466

Start date: 15/02/2002

Cease date: 27/06/2004

Principal Place Of Business address: 10 Apollo Street, WARRIEWOOD NSW 2102 024905714

Start date: 04/07/2008

Cease date: 20/02/2012

Principal Place Of Business address: Unit 9, 5 Vuko Place, WARRIEWOOD NSW 2102 1F0117218

Start date: 01/07/2006

Cease date: 03/07/2008

Principal Place Of Business address: Unit 10, 14 Polo Avenue, MONA VALE NSW 2103 020416661

Start date: 18/06/2004

Cease date: 30/06/2006

Principal Place Of Business address: 25 Kananook Avenue, BAYVIEW NSW 2104 0E7736169

Start date: 23/09/2002

Cease date: 17/06/2004

Principal Place Of Business address: Unit 8, 7 Darley Street, MONA VALE NSW 2103 017783466

Start date: 15/02/2002

Cease date: 22/09/2002

## Contact Address

Section 146A of the Corporations Act 2001 states 'A contact address is the address to which communications and notices are sent from ASIC to the company'.

Address: PO BOX 6340, FRENCHS FOREST NSW 2086

Start date: 28/06/2003

## Officeholders and Other Roles

Document Number

## Director

Name: TAMIR HAIKIN 026443554

Address: 19 Haig Street, MAROUBRA NSW 2035

Born: 25/10/1976, PETAH TIKVA, ISRAEL

Appointment date: 23/03/2010

Name: STEPHANE WILFRID THOMAS 1F0386224

Address: Unit 3, 2-10 Le Vesinet Drive, HUNTERS HILL NSW 2110

Born: 07/07/1973, LOBREVILLE, GABON

Appointment date: 18/06/2004

## Previous Director

Name: UWE BERNHARD BACKES 024313336

Address: 20 Iluka Avenue, ELANORA HEIGHTS NSW 2101

Born: 21/11/1962, DORTMUND, GERMANY

Appointment date: 15/02/2002

Cease date: 20/12/2010

## Previous Secretary

Name: UWE BERNHARD BACKES 024313336

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**PROOF OF SERVICE**

I declare that:

I am and was at the time of service of the papers herein, over the age of eighteen (18) years and am not a party to the action. I am employed in the County of Sonoma, California, and my business address is 438 1st Street, 4th Floor, Santa Rosa, California 95401.

On January 14, 2016, I served the following document, described as set forth below on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, at Sonoma, addressed as follows:

**PLAINTIFFS' SECOND AMENDED COMPLAINT**

Sigrid Irias  
Law Offices of Santana, Tchong, Vierra &  
Symonds  
71 Stevenson Street, Ste. 700  
San Francisco, CA 94105

Attorney for defendant  
Outdoor Architectural Accents; a  
California Cooperation dba Outdora

John Samberg  
Simon Aron  
Wolf, Rifkin, Shapiro, Schulman & Rabkin,  
LLP  
5594-B Longley Lane  
Reno, NV 89511

Attorney for defendant  
Ecosmart, Inc

- ☒ **BY FIRST-CLASS MAIL:** I caused such envelopes to be deposited in the United States mail, at Santa Rosa, California, with postage thereon fully prepaid, individually, addressed to the parties as indicated. I am readily familiar with the firm's practice of collection and processing correspondence in mailing. It is deposited with the United States postal service each day and that practice was followed in the ordinary course of business for the service herein attested to.
- ☐ **BY FACSIMILE TRANSMISSION:** By use of facsimile machine number (707)545-8288, I served a copy of the within document(s) on the above interested parties at the facsimile numbers listed above. The transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine.
- ☐ **BY ELECTRONIC FILING SERVICE:** My electronic business address is tuscano@perrylaw.net and I caused such document(s) to be electronically served for the above-entitled case to those parties on the Service List below. The file transmission was reported complete and a copy will be maintained with the original document(s) in our office.

1  
2 I declare under penalty of perjury under the laws of the State of California that the  
3 foregoing is true and correct.

4 Executed on January 14, 2016, at Santa Rosa, California.

5   
6 Stephanie Caron

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PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ LLP



Ex. 4

3/15/2016 MAD DESIGN GROUP Mail - LIU claim ref: SYDCAS000100386 - The Fire Company Pty Ltd / EcoSmart Inc re US proceedings by Margrett Lewis & Ors

ecosmart<sup>+</sup>  
Fire  
www.ecosmartfire.com

Alexander Eburne <alex@ecosmartfire.com>

---

**LIU claim ref: SYDCAS000100386 - The Fire Company Pty Ltd / EcoSmart Inc re  
US proceedings by Margrett Lewis & Ors**

2 messages

---

**Melissa Mudge** <melissa.mudge@ajg.com.au>

Mon, Feb 1, 2016 at 8:34 PM

To: Alexander Eburne <alex@ecosmartfire.com>

Cc: "stephane@thefirecompany.com.au" <stephane@thefirecompany.com.au>, James Forster  
<james.forster@ajg.com.au>, Adam Sulway <adam.sulway@ajg.com.au>

Hi Alex

Thank you for sending through a copy of the Plaintiffs' Second Amended Complaint in respect of the above matter.

As instructed, we provided the amended pleadings to Liberty and requested that the coverage position be reviewed in light of the amendments. Unfortunately, you will see from Liberty's email below that there was no new information contained in the amended document which materially impacted its position on cover. Accordingly, Liberty maintains its original position which is outlined in the email from Angus Kench of Liberty to AJG dated 21 April 2016 (**attached**).

We specifically requested that the coverage position be provided on letterhead. However, we have again received their response by email. I would be grateful if you could let me know whether the attached email with Liberty's sign off image is acceptable. If not, we will press for the response to be provided on letterhead.

Kind regards

**Melissa Mudge**

Senior Claims Executive, Claims National Technical, Arthur J. Gallagher

| Ext: 2 9424 1826 | Fax: +61 2 9424 1800

melissa.mudge@ajg.com.au | www.ajg.com.au

**From:** Taylor, Michael [mailto:michael.taylor@LibertyIU.com]

**Sent:** Tuesday, 2 February 2016 2:24 PM

**To:** Melissa Mudge <melissa.mudge@ajg.com.au>

ES-001549

3/15/2016 MAD DESIGN GROUP Mail - LIU claim ref: SYDCAS000100386 - The Fire Company Pty Ltd / EcoSmart Inc re US proceedings by Margrett Lewis & Ors

**Subject:** RE: LIU claim ref: SYDCAS000100386 - The Fire Company Pty Ltd / EcoSmart Inc re US proceedings by Margrett Lewis & Ors

Hi Melissa,

I have attached the original declination email Sent by Angus Kench to Colin Bentley.

I would advise that there was no new information in the amended document which would cause us to deviate from our initial position on coverage which was previously conveyed to the insured in the attached email, core of yourselves.

Let me know if you would like to discuss further.

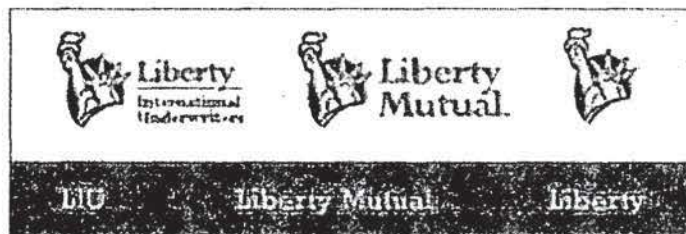
Kind regards,

**Michael Taylor**  
**NSW Casualty Claims Manager**  
Liberty International Underwriters

T: +61 2 8298 5971

M: +61 405 636 091

[www.liuaustralia.com.au](http://www.liuaustralia.com.au)



**Important Notice about Privacy:**

1. If you are providing LIU with Personal Information click here for LIU's Privacy Notice.
2. LIU may transfer your Personal Information to an overseas recipient as part of its internal data storage and claims management procedures. You may give or withhold consent for this transfer, which may be express or implied. If you consent, LIU is not obliged to ensure that the overseas recipient does not breach the Australian Privacy Principles, but LIU endeavours to do so.
3. If you are providing Personal Information to LIU on behalf of another individual LIU relies on you to

ES-001550



3/15/2016 MAD DESIGN GROUP Mail - LIU claim ref: SYDCAS000100386 - The Fire Company Pty Ltd / EcoSmart Inc re US proceedings by Margrett Lewis & Ors  
provide its Privacy Notice to them. If you have not done this, you must tell LIU before you provide the relevant data.

The information in this e-mail and in any attachments may be confidential or legally privileged. If you are not the intended recipient neither is waived or lost by mistaken delivery and you are prohibited from retaining, distributing, disclosing or using any information contained herein. Please notify the sender by return email and delete the message and any attachments from your system if you are not the intended recipient. Liberty International Underwriters may monitor the content of e-mails sent and received via its network for viruses or unauthorised use and for other lawful business purpose, but accepts no liability caused by viruses or unauthorised use. Further information about Liberty International Underwriters is available at [www.liuasiapacific.com](http://www.liuasiapacific.com).

This email is confidential and may contain legally privileged information. If you are not the intended recipient, you must not disclose or use the information contained in it. If you have received this email in error, please notify us immediately by return email and delete the document.

----- Forwarded message -----

From: "Kench, Angus" <Angus.Kench@libertyiu.com>  
To: Collin Bentley <collin.bentley@ajg.com.au>  
Cc: "Taylor, Michael" <michael.taylor@libertyiu.com>  
Date: Tue, 21 Apr 2015 05:51:18 +0000  
Subject: FW: EcoSmart, Inc. - Summons and Complaint (Margarett Lewis)

LIU Claim Number: SYDCAS000100386

Collin

Further to our further telephone conversation today I note the above mentioned Summons, issued in Sonoma County, California, refers to certain particulars of importance: -

- The action was filed on 1 April 2015
- The general allegations refer to the Plaintiff purchasing bottles of E-NRG from Defendant Outdora on or about March 2014
- On June 8, 2014 whilst using an outdoor fire pit the plaintiffs used the above mentioned E-NRG and sustained injury
- The said bottle was "manufactured, bottled, sold and distributed without a flame arrestor"

The relevant LIU Combined General & Products Liability Policy #SY-CAS-13-438176 contains a number of terms, conditions, exclusions and endorsements. Of specific import to this claim is Endorsement 3, Exclusion 7.24 and Endorsement 4 Existing Products Endorsement (Claims Made) with relevant endorsement period being 30<sup>th</sup> April 2014 to 30<sup>th</sup> June 2014.

Based on the summons and in particular the circumstances summarised above the policy will not respond to this current claim.

ES-001551

3/15/2016 MAD DESIGN GROUP Mail - LIU claim ref: SYDCAS000100386 - The Fire Company Pty Ltd / EcoSmart Inc re US proceedings by Margrett Lewis & Ors

This response is based on the information provided to date however should further information come to light which affects the above circumstances please forward such information and we can review the matter again.

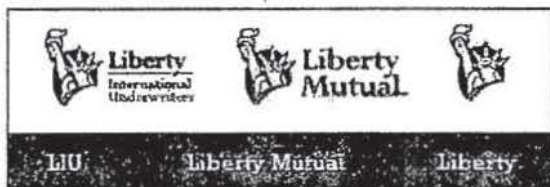
If you or your client has any queries in relation to this please do not hesitate to contact us.

Regards

**Angus Kench**  
**Assistant Vice President, Casualty Claims - Asia Pacific**  
Liberty International Underwriters

T: +61 2 8298 5975

M: +61 412 570 931



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---

**From:** Kench, Angus  
**Sent:** Monday, 20 April 2015 11:26 AM  
**To:** 'Collin Bentley'  
**Cc:** Melissa Mudge; Taylor, Michael  
**Subject:** RE: Ecosmart, Inc. - Summons and Complaint (Margarett Lewis)

Collin

Thank you for your email. I have spoken briefly with our underwriter, John Nicholls who has briefed me about discussions he held with AJG last Friday during which issues surrounding indemnity were discussed.

I note that John has advised me: -

*"I can confirm that I met with the broker Friday afternoon and we did discuss the potential of there being no indemnity under the policy for this matter. Even before I met with the broker he indicated that he discussed the*

ES-001552

3/15/2016 MAD DESIGN GROUP Mail - LIU claim ref: SYDCAS000100386 - The Fire Company Pty Ltd / EcoSmart Inc re US proceedings by Margrett Lewis & Ors

*potential for there being no indemnity with the client. Because of this and the potential need to lodge a response I suggested that it might be prudent for the client's US office to contact Esther Holm of Lewis Brisbois Bisgaard & Smith LLP as Esther handled the client's previous matter relating to Friscia as well as working with the client on label improvements etc. It was stressed at that point that the client's should act as a prudent uninsured".*

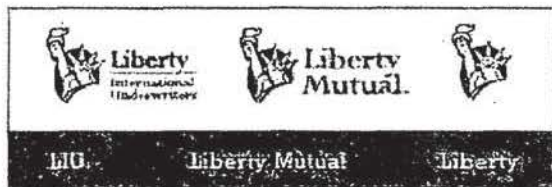
We are currently reviewing all information and will be in contact again very shortly with our initial formal acknowledgement and position.

If you have any questions in the meantime please do not hesitate to contact me.

**Angus Kench**  
**Assistant Vice President, Casualty Claims - Asia Pacific**  
Liberty International Underwriters

T: +61 2 8298 5975

M: +61 412 570 931



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---

**From:** Collin Bentley [mailto:collin.bentley@ajg.com.au]  
**Sent:** Monday, 20 April 2015 9:23 AM  
**To:** Kench, Angus  
**Cc:** Melissa Mudge  
**Subject:** FW: Ecosmart, Inc. - Summons and Complaint (Margarett Lewis)

Dear Angus,

**GENERAL & PRODUCTS LIABILITY CLAIM - THE FIRE COMPANY / ECOSMART**

**CLAIMANT:** Nicolette Lewis

**DOL:** 8 June 2014

**POLICY:** SY-CAS-13-438176 \$20M x \$10K  
ES-001553



3/15/2016

MAD DESIGN GROUP Mail - Re: Ecosmart, Inc. - Summons and Complaint (Margarett Lewis)

ecosmart<sup>+</sup>  
Fire  
www.ecosmartfire.com

Alexander Eburne <alex@ecosmartfire.com>

---

**Re: Ecosmart, Inc. - Summons and Complaint (Margarett Lewis)**

---

James Forster <james.forster@ajg.com.au>

Tue, Apr 21, 2015 at 5:10 PM

To: "stephane@thefirecompany.com.au" <stephane@thefirecompany.com.au>, "Alexander Eburne (alex@ecosmartfire.com)" <alex@ecosmartfire.com>

Good morning Gentlemen

Please find below Liberty's formal response to the Summons and Complaint (Margarett Lewis).

I'm about to ring Liberty for renewal terms and will be in touch soon

**James Forster**

Senior Account Manager, Sydney Corporate, Arthur J. Gallagher

Direct: +61 2 9424 1846 | Ext: 21846 | Mobile: +61 439 660 063 | Fax: +61 2 9424 1800

james.forster@ajg.com.au | www.ajg.com.au

---

**From:** Kench, Angus [mailto:Angus.Kench@LibertyIU.com]

**Sent:** Tuesday, April 21, 2015 3:51 PM

**To:** Collin Bentley

**Cc:** Taylor, Michael

**Subject:** FW: Ecosmart, Inc. - Summons and Complaint (Margarett Lewis)

LIU Claim Number: SYDCAS000100386

Collin

Further to our further telephone conversation today I note the above mentioned Summons, issued in Sonoma County, California, refers to certain particulars of importance: -

ES-001554

3/15/2016

MAD DESIGN GROUP Mail - Re: Ecosmart, Inc. - Summons and Complaint (Margarett Lewis)

- The action was filed on 1 April 2015
- The general allegations refer to the Plaintiff purchasing bottles of E-NRG from Defendant Outdora on or about March 2014
- On June 8, 2014 whilst using an outdoor fire pit the plaintiffs used the above mentioned E-NRG and sustained injury
- The said bottle was "manufactured, bottled, sold and distributed without a flame arrestor"

The relevant LIU Combined General & Products Liability Policy #SY-CAS-13-438176 contains a number of terms, conditions, exclusions and endorsements. Of specific import to this claim is Endorsement 3, Exclusion 7.24 and Endorsement 4 Existing Products Endorsement (Claims Made) with relevant endorsement period being 30<sup>th</sup> April 2014 to 30<sup>th</sup> June 2014.

Based on the summons and in particular the circumstances summarised above the policy will not respond to this current claim.

This response is based on the information provided to date however should further information come to light which affects the above circumstances please forward such information and we can review the matter again.

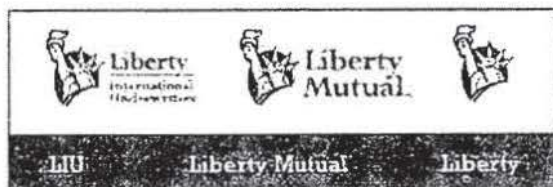
If you or your client has any queries in relation to this please do not hesitate to contact us.

Regards

**Angus Kench**  
**Assistant Vice President, Casualty Claims - Asia Pacific**  
 Liberty International Underwriters

T: +61 2 8298 5975

M: +61 412 570 931



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**OAMPS Insurance Brokers is now Arthur J. Gallagher. Your broker relationship is the same. The services**

3/15/2016

MAD DESIGN GROUP Mail - Re: Ecosmart, Inc. - Summons and Complaint (Margarett Lewis)

**you expect will continue and be enhanced by greater global capability.**

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ES-001556



Case No. SCV261819  
02-05-2018

Request for Production of Documents  
Served on Liberty Mutual Insurance  
Company

1 LESLIE R. PERRY (SBN 062390)  
 2 JOHN J. JOHNSON (SBN 114902)  
 3 HEATHER-ANN T. YOUNG (SBN 283211)  
 4 PERRY, JOHNSON, ANDERSON,  
 5 MILLER & MOSKOWITZ, LLP  
 438 First Street, Fourth Floor  
 Santa Rosa, CA 95401  
 Telephone: (707) 525-8800  
 Facsimile: (707) 545-8242

6 Attorney for Plaintiffs  
 7 MARGRETT LEWIS, NICOLETTE LEWIS,  
 ALEXIS LEWIS, and JEFFREY LEWIS

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SONOMA

10 NICOLETTE LEWIS, ALEXIS LEWIS,  
 11 MARGRETT LEWIS; and JEFFREY LEWIS

12 Plaintiff(s),

13 vs.

14 LIBERTY MUTUAL INSURANCE COMPANY,  
 15 LIBERTY INTERNATIONAL UNDERWRITERS,  
 and DOES 1 through 50, inclusive,

16 Defendant(s).

) CASE No. 261819

) Unlimited Civil Action

) **PLAINTIFF NICOLETTE LEWIS'**  
 ) **REQUEST FOR PRODUCTION OF**  
 ) **DOCUMENTS TO DEFENDANT**  
 ) **LIBERTY MUTUAL INSURANCE**  
 ) **COMPANY**  
 ) **[SET ONE]**

) Department: 16  
 ) Judge: Hon. Patrick Broderick  
 ) Trial Date: not yet set

21 REQUESTING PARTY: Plaintiff NICOLETTE LEWIS

22 RESPONDING PARTIES: Defendant LIBERTY MUTUAL INSURANCE COMPANY

23 SET NUMBER: ONE

25 Pursuant to Code of Civil Procedure section 2031.010 et seq., Plaintiff NICOLETTE  
 26 LEWIS demands that Defendant LIBERTY MUTUAL INSURANCE COMPANY, produce for  
 27 inspection and copying at the Law Offices of Perry, Johnson, Anderson, Miller & Moskowitz,  
 28 LLP, 438 First Street, 4<sup>th</sup> Floor, Santa Rosa, California 95401 within the time proscribed by Code

1 of Civil Procedure section 2031.260, the following specified items in Defendants' possession,  
2 custody or control.

### 3 DEFINITIONS

4  
5 A. As used herein the word "BROKER" means any person or entity transacting insurance on  
6 behalf of ECOSMART, including, but not limited to any representative or agent of OAMPS  
7 Insurance Brokers and/or Arthur J. Gallagher Insurance Brokers (including James Forster and/or  
8 Melissa Mudge).

9 B. As used herein the word "CHANGE" means a difference or reduction in coverage, risk,  
10 premium.

11 C. As used herein the words "CLAIMS MADE" means any claim made during the policy  
12 period, , regardless of when the act that gave rise to the claim took place.

13 D. As used herein, the word "COMMUNICATION(S)" means any form of communication,  
14 including, but not limited to emails, letters (delivered by mail, personal delivery or otherwise),  
15 text, memorandum, facsimile, documents made available on the internet for viewing, downloading  
16 OR uploading (e.g. sharing Google Documents, Sharefile, Dropbox, etc.) and includes direct  
17 communications and also communications in which an individual is copied, blind copied, or in  
18 some fashion included in, or made privy to, the COMMUNICATION.

19 E. As used herein the words "DATE OF PRODUCTION" means the date on which the  
20 DOCUMENTS are produced.

21 F. As used herein, the word "DOCUMENT" or "DOCUMENTS" is used herein to mean all  
22 "writings" as defined in California Evidence Code Section 250 (see text, below), including, but  
23 not limited to, all written, recorded, or graphic material, however produced or reproduced, of any  
24 kind in your possession, custody, or control, or in the possession, custody, or control of any  
25 officers, members, partners, employees, servants, or your agents or representatives, including,  
26 without limitation, letters, correspondence, telegrams, memoranda, records, minutes, contracts,  
27 agreements, memoranda, or records of telephone or personal conversations or conferences,  
28 interoffice communications, emails, sound recordings, handwritings, ELECTRONICALLY



1 STORED INFORMATION, electronic data processing inputs, and memories of all kinds,  
 2 including hard drives, CD ROM data, tapes and discs, computer reports and printouts, microfilm,  
 3 bulletins, circulars, pamphlets, studies, notices, summaries, reports, books, teletype messages, bills  
 4 of lading, invoices, work sheets, and index cards, or copies of such documents where originals are  
 5 not available. The term "document" or "documents" includes any and all matter that relates in  
 6 whole or in part to the subject referred to in a demand to produce. Where a document has been  
 7 prepared in several copies that are not identical (or which by reason of subsequent modification,  
 8 addition, or notation are no longer identical), each non-identical copy is a separate "document."  
 9 DOCUMENT includes any COMMUNICATION.

10  
 11 Evidence Code Section 250: "Writing" means handwriting, typewriting, printing,  
 12 photostating, photographing, photocopying, transmitting by electronic mail or facsimile,  
 13 and every other means of recording upon any tangible thing, any form of communication  
 14 or representation, including letters, words, pictures, sounds, or symbols, or combinations  
 15 thereof, and any record thereby created, regardless of the manner in which the record has  
 16 been stored."

17 G. As used herein the word "ECOSMART" means EcoSmart, Inc., its agents, employees,  
 18 attorneys, accountants, investigators, insurance broker(s) and anyone else acting on its behalf,  
 19 The Fire Company Pty Ltd, Esmart Group Pty Ltd, any employee, representative or agent of  
 20 OAMPS Insurance Brokers and/or Arthur J. Gallagher Insurance Brokers (including James Forster  
 21 and/or Melissa Mudge).

22 H. As used herein the words "ECOSMART PRODUCT(S)" means any fuel produced by  
 23 ECOSMART that is intended for use by consumers, including but not limited to E-NRG.

24 I. As used herein the word "ELECTRONIC" means relating to technology having electrical,  
 25 digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

26  
 27 J. As used herein the words "ELECTRONICALLY STORED INFORMATION" means  
 28 information that is stored in an ELECTRONIC medium.

1 K. As used herein the word "EMPLOYEE" means an employee as defined in Cal. Labor  
2 Code §3351 to wit: every person in the service of an employer under any appointment or contract  
3 of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully  
4 employed.

5 L. As used herein the word "INSURANCE" means any form of liability insurance including,  
6 but not limited to General, Products OR Combined General & Products Liability Policies  
7 (including INSURANCE POLICY #1 or INSURANCE POLICY #2).

8 M. As used herein the words "INSURANCE POLICY #1" means Liberty International  
9 Underwriters Combined General & Products Liability Policy #ME-CAS-12-438176 with a period  
10 of insurance 4 p.m. April 30, 2013 to 4 p.m. April 30, 2014. (Exhibit 1)

11 N. As used herein the words "INSURANCE POLICY #2" means Liberty International  
12 Underwriters Combined General & Products Liability Policy #SY-CAS-13-438167 with a period  
13 of insurance 4 p.m. April 30, 2014 to 4 p.m. April 30, 2015. (Exhibit 2)

14 O. As used herein the word "LAWSUIT(S)" means any lawsuit based on personal injuries or  
15 death resulting from an ECOSMART product.

16 P. As used herein the words "LEWIS V. ECOSMART" means Lewis v. EcoSmart et al.,  
17 Sonoma County Superior Court Case No. SCV-256907. (Exhibit 3)

18 Q. As used herein the words "LIBERTY INTERNATIONAL UNDERWRITERS" means  
19 Liberty International Underwriters and any agent, employees, representatives, attorneys (as to  
20 non-privileged communications), investigators, and anyone else acting on its or Liberty  
21 International Underwriters' behalf, or of any subsidiary or entity related to either named entity.

22 R. As used herein the words "NOTIFY" or "NOTIFIED" means put on notice or advise or  
23 report to in any manner, whether formally, informally or otherwise.

24 S. As used herein the word "OR" means and/or.

25 T. As used herein the word "PERSON" includes a natural person, firm, association,  
26  
27  
28



1 organization, partnership, business, trust, corporation or public entity.

2 U. As used herein the word "PRODUCE" shall mean to present the original document for  
3 copying at the offices of Perry, Johnson, Anderson, Miller & Moskowitz at 438 First Street,  
4 Fourth Floor, Santa Rosa, California 95401 or, in the alternative, to supply Plaintiffs' attorneys  
5 with an exact copy of the document. If any document or portion thereof is not produced, you are  
6 asked to identify the document and to give the reason that it is not produced.

7  
8 V. As used herein, the words "REGARDING" or "RELATING" when used with respect to  
9 documents shall mean any and all documents which in in any or in any manner refer to, relate to,  
10 reflect, concern, contain, embody, or describe the subject matter referred to in any of the particular  
11 document demands made below.

12 W. As used herein the word "RELATIONSHIP" means any way that Liberty Mutual  
13 Insurance Company is connected to or involved with Liberty International Underwriters, whether  
14 as an owner, subsidiary, a division, a trading company for, or otherwise.

15 X. As used herein the word "RENEWAL" means the continuation of insurance coverage.

16  
17 Y. As used herein the words "TRADING NAME" refers to "trading name" as that term is  
18 used in INSURANCE POLICY #1 and INSURANCE POLICY #2.

19 Z. As used herein, the words, "YOU" and "YOUR" means Liberty Mutual Insurance  
20 Company and any agent, employees, representatives, attorneys (as to non-privileged  
21 communications), investigators, and anyone else acting on behalf of either entity, or of any  
22 subsidiary or entity(ies) related to Liberty Mutual Insurance Company.

23  
24 NON-PRODUCTION

25 If any document falling within the demanding party's request is considered to be excluded  
26 from production on the grounds of an objection or privilege, responding party shall include in the  
27 written responses to said request a list of the documents so withheld from the production,  
28 identifying each document by: date, name, title and address of addressor and addressee; name, title



1 and address of each other person to whom a copy of the document was sent; general character of  
 2 the document to be exempt from production. If responding parties have at any time relinquished  
 3 possession, custody or control of or destroyed any document falling within demanding party's  
 4 request, responding parties shall identify each document falling within demanding party's request,  
 5 responding parties shall identify each document as above and as to existing documents identify the  
 6 persons, if any, who currently have custody, possession or control of them.

7 For each document which you fail or refuse to produce, you are to provide all of the following  
 8 information:  
 9

- 10 1. The exact name and title by which you refer to it;
- 11 2. The date and all identifying numbers on it;
- 12 3. The identity of each person who wrote, signed, initialed, or otherwise participated in  
 13 the execution of the document;
- 14 4. The identity of each person having custody or control of the document; and
- 15 5. Each reason why you have failed or refused to produce such documents.

#### 16 **DOCUMENTS TO BE PRODUCED**

##### 17 **REQUEST NO. 1:**

18 All DOCUMENTS RELATING to any California licenses held by YOU've held in the  
 19 past 10 years.

##### 20 **REQUEST NO. 2:**

21 All DOCUMENTS RELATING to that portion of the Liability Policy Form LIU-AUS-  
 22 CAS-CGL-2000001 referenced in INSURANCE POLICY #1 which states "this schedule attaches  
 23 and forms part of the LIU part of LIU Combined General & Products Liability Policy Form LIU-  
 24 AUS-CAS-CGL-2000001 and is valid only if it is signed and dated below by a person duly  
 25 authorized by Liberty International Underwriters."  
 26  
 27  
 28

**REQUEST NO. 3:**

All DOCUMENTS RELATING to INSURANCE POLICY #1.

**REQUEST NO. 4:**

All DOCUMENTS RELATING to INSURANCE POLICY #2.

**REQUEST NO. 5:**

All COMMUNICATIONS between YOU and ECOSMART from April 30, 2013 to DATE OF PRODUCTION.

**REQUEST NO. 6:**

All COMMUNICATIONS between YOU and LIBERTY INTERNATIONAL UNDERWRITERS from April 30, 2013 to DATE OF PRODUCTION REGARDING ECOSMART.

**REQUEST NO. 7:**

All COMMUNICATIONS between YOU and ECOSMART RELATING to INSURANCE POLICY #1.

**REQUEST NO. 8:**

All COMMUNICATIONS between YOU and LIBERTY INTERNATIONAL UNDERWRITERS RELATING to INSURANCE POLICY #1.

**REQUEST NO. 9:**

All COMMUNICATIONS between YOU and ECOSMART RELATING to INSURANCE POLICY #2.

**REQUEST NO. 10:**

All COMMUNICATIONS between YOU and a BROKER RELATING to INSURANCE POLICY #1.

**REQUEST NO. 11:**

All COMMUNICATIONS between YOU and a BROKER RELATING to INSURANCE POLICY #2.

**REQUEST NO. 12:**

All COMMUNICATIONS between YOU and a BROKER REGARDING ECOSMART between April 30, 2013 to DATE OF PRODUCTION.

**REQUEST NO. 13:**

All COMMUNICATIONS between YOU and a BROKER REGARDING INSURANCE for ECOSMART from April 30, 2013 to DATE OF PRODUCTION.

**REQUEST NO. 14:**

All COMMUNICATIONS between YOU and ECOSMART RELATING to INSURANCE POLICY #2.

**REQUEST NO. 15:**

All DOCUMENTS RELATING to RENEWAL of INSURANCE POLICY #1.

**REQUEST NO. 16:**

All COMMUNICATIONS involving YOU and ECOSMART RELATING to RENEWAL of INSURANCE POLICY #1.

**REQUEST NO. 17:**

All COMMUNICATIONS involving YOU and LIBERTY INTERNATIONAL UNDERWRITERS RELATING to RENEWAL of INSURANCE POLICY #1.

**REQUEST NO. 18:**

All DOCUMENTS RELATING to any CHANGE in INSURANCE POLICY #1 from April 30, 2013 to DATE OF PRODUCTION.

///



**REQUEST NO. 19:**

All COMMUNICATIONS involving YOU and ECOSMART RELATING to any CHANGE in INSURANCE POLICY #1 from April 30, 2013 to DATE OF PRODUCTION.

**REQUEST NO. 20:**

All COMMUNICATIONS involving YOU and LIBERTY INTERNATIONAL UNDERWRITERS -RELATING to any CHANGE in INSURANCE POLICY #1 from April 30, 2013 to DATE OF PRODUCTION.

**REQUEST NO. 21:**

All COMMUNICATIONS involving YOU and a BROKER RELATING to any CHANGE in INSURANCE POLICY #1 from April 30, 2013 to DATE OF PRODUCTION.

**REQUEST NO. 22:**

All COMMUNICATIONS involving YOU and ECOSMART RELATING to INSURANCE POLICY #2.

**REQUEST NO. 23:**

All COMMUNICATIONS involving YOU and LIBERTY INTERNATIONAL UNDERWRITERS RELATING to INSURANCE POLICY #2.

**REQUEST NO. 24:**

All COMMUNICATIONS involving YOU and a BROKER RELATING to INSURANCE POLICY #2.

**REQUEST NO. 25:**

All DOCUMENTS RELATING to the denial of coverage to ECOSMART in *LEWIS V. ECOSMART*.

**REQUEST NO. 26:**

All COMMUNICATIONS between YOU and a BROKER RELATING to the denial of

1 coverage to ECOSMART in *LEWIS V. ECOSMART*.

2 **REQUEST NO. 27:**

3 All COMMUNICATIONS between YOU and a BROKER RELATING to the denial of  
4 coverage to ECOSMART in *LEWIS V. ECOSMART*.

5 **REQUEST NO. 28:**

6 All DOCUMENTS relating to YOUR decision to decline to provide a defense to  
7 ECOSMART in *LEWIS V. ECOSMART*.

8 **REQUEST NO. 29:**

9 All DOCUMENTS RELATING to the reason for CHANGE to INSURANCE POLICY #1  
10 from April 30, 2013 to DATE OF PRODUCTION.

11 **REQUEST NO. 30:**

12 All DOCUMENTS RELATING to NOTICE by YOU to ECOSMART REGARDING any  
13 CHANGE to INSURANCE POLICY #1 from April 30, 2013 to DATE OF PRODUCTION.

14 **REQUEST NO. 31:**

15 All DOCUMENTS RELATING to NOTICE by YOU to a BROKER REGARDING any  
16 CHANGE to INSURANCE POLICY #1 from April 30, 2013 to DATE OF PRODUCTION.

17 **REQUEST NO. 32:**

18 All DOCUMENTS RELATING to replacement of Endorsement 3, Exclusion 7.24 in  
19 INSURANCE POLICY #2 including, but not limited to, DOCUMENTS RELATING to the  
20 decision to include this exclusion in INSURANCE POLICY #2.

21 **REQUEST NO. 33:**

22 All DOCUMENTS REGARDING NOTICE to ECOSMART that Exclusion 7.24 was  
23 inserted into INSURANCE POLICY #2.

24 ///

**REQUEST NO. 34:**

All COMMUNICATIONS involving YOU and ECOSMART relating to Exclusion 7.24 of INSURANCE POLICY #2.

**REQUEST NO. 35:**

All COMMUNICATIONS involving YOU and LIBERTY UNDERWRITERS INTERNATIONAL relating to Exclusion 7.24 of INSURANCE POLICY #2.\

**REQUEST NO. 36:**

All COMMUNICATIONS involving YOU and a BROKER relating to Exclusion 7.24 of INSURANCE POLICY #2.

**REQUEST NO. 37:**

All DOCUMENTS RELATING to Endorsement 4 in INSURANCE POLICY #2 including, but not limited to DOCUMENTS REGARDING the decision to include this Endorsement in INSURANCE POLICY #2.

**REQUEST NO. 38:**

All DOCUMENTS REGARDING NOTICE to ECOSMART that Endorsement 4 was inserted into INSURANCE POLICY #2.

**REQUEST NO. 39:**

All COMMUNICATIONS involving YOU and ECOSMART RELATING to Endorsement 4 of INSURANCE POLICY #2.

**REQUEST NO. 40:**

All COMMUNICATIONS involving YOU and LIBERTY INTERNATIONAL UNDERWRITERS RELATING to Endorsement 4 of INSURANCE POLICY #2.

**REQUEST NO. 41:**

All COMMUNICATIONS involving YOU and a BROKER RELATING to



1 Endorsement 4 of INSURANCE POLICY #2.

2 **REQUEST NO. 42:**

3 All DOCUMENTS RELATING to the increase in premium to AUD \$150,000 for  
4 INSURANCE POLICY #2.

5 **REQUEST NO. 43:**

6 All DOCUMENTS REGARDING NOTICE to ECOSMART that the premium for  
7 INSURANCE POLICY #2 was AUD \$150,000.

8 **REQUEST NO. 44:**

9 All COMMUNICATIONS involving YOU and ECOSMART RELATING to the increase  
10 of premium to AUD \$150,000 for INSURANCE POLICY #2.

11 **REQUEST NO. 45:**

12 All COMMUNICATIONS involving YOU and LIBERTY INTERNATIONAL  
13 UNDERWRITERS RELATING to the increase of premium to AUD \$150,000 for INSURANCE  
14 POLICY #2.

15 **REQUEST NO. 46:**

16 All COMMUNICATIONS involving YOU and a BROKER RELATING to the increase of  
17 premium to AUD \$150,000 for INSURANCE POLICY #2.

18 **REQUEST NO. 47:**

19 All DOCUMENTS RELATING to the liability limit of \$2,500,000 in Endorsement 4 to  
20 INSURANCE POLICY #2.

21 **REQUEST NO. 48:**

22 All DOCUMENTS REGARDING NOTICE to ECOSMART of the liability limit of  
23 \$2,500,000 in Endorsement 4 to INSURANCE POLICY #2.

24 ///

**REQUEST NO. 49:**

All COMMUNICATIONS involving YOU and ECOSMART REGARDING the liability limit of \$2,500,000 in Endorsement 4 to INSURANCE POLICY #2.

**REQUEST NO. 50:**

All COMMUNICATIONS involving YOU and LIBERTY INTERNATIONAL UNDERWRITERS REGARDING the liability limit of AUD \$2,500,000 in Endorsement 4 to INSURANCE POLICY #2.

**REQUEST NO. 51:**

All COMMUNICATIONS involving YOU and a BROKER REGARDING the liability limit of \$2,500,000 in Endorsement 4 to INSURANCE POLICY #2.

**REQUEST NO. 52:**

All DOCUMENTS RELATING to YOUR denial of coverage to ECOSMART in *LEWIS v. ECOSMART*.

**REQUEST NO. 53:**

All COMMUNICATIONS between YOU and LIBERTY INTERNATIONAL UNDERWRITERS RELATING to the denial of coverage to ECOSMART in *LEWIS V. ECOSMART*.

**REQUEST NO. 54:**

All DOCUMENTS RELATING to YOUR refusal to indemnify ECOSMART in *LEWIS v. ECOSMART*.

**REQUEST NO. 55:**

All DOCUMENTS RELATING to *LEWIS v. ECOSMART*.

**REQUEST NO. 56:**

All DOCUMENTS RELATING to LAWSUITS against ECOSMART from April 30, 2013

1 to June 30, 2014.

2 **REQUEST NO. 57:**

3 All DOCUMENTS RELATING to flame arrestors REGARDING ECOSMART  
4 PRODUCT(S).

5 **REQUEST NO. 58:**

6 All DOCUMENTS RELATING to YOUR knowledge of burn injuries from ECOSMART  
7 PRODUCT(S) from April 30, 2013 to June 30, 2014.

8 **REQUEST NO. 59:**

9 All DOCUMENTS RELATING to any CLAIMS MADE against ECOSMART from April  
10 30, 2013 to June 30, 2014.

11 **REQUEST NO. 60:**

12 All DOCUMENTS REGARDING the legal RELATIONSHIP between YOU and  
13 LIBERTY INTERNATIONAL UNDERWRITERS.

14 **REQUEST NO 61:**

15 DOCUMENTS REGARDING what TRADING NAME means when the term is used by  
16 YOU in YOUR insurance policies.

17 **REQUEST NO. 62:**

18 ALL DOCUMENTS REGARDING the application for, and renewals of, YOUR  
19 Australian Business Number ("ABN").

20 **REQUEST NO. 63:**

21 ALL DOCUMENTS REGARDING the corporate formation of LIBERTY  
22 INTERNATIONAL UNDERWRITERS in Australia or any state jurisdiction therein.

23 **REQUEST NO. 64:**

24 ALL DOCUMENTS REGARDING the class and number of shares YOU hold in  
25  
26  
27  
28



LIBERTY INTERNATIONAL UNDERWRITERS.

**REQUEST NO. 65:**

ALL DOCUMENTS REGARDING the nomination, election, or appointment of directors and officers of LIBERTY INTERNATIONAL UNDERWRITERS.

**REQUEST NO. 66:**

ALL DOCUMENTS REGARDING periodic, special, or current corporate governance reports from LIBERTY INTERNATIONAL UNDERWRITERS.

**REQUEST NO. 67:**

ALL DOCUMENTS REGARDING the registration of "Liberty International Underwriters" as a TRADING NAME with the Government of Australia or any state or local jurisdiction therein.

**REQUEST NO. 68:**

ALL DOCUMENTS REGARDING the authority of LIBERTY INTERNATIONAL UNDERWRITERS to execute insurance policies using the "Liberty Mutual Insurance Company" name.

**REQUEST NO. 69:**

ALL DOCUMENTS identified in YOUR responses to Special Interrogatories Set One served herewith .

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**REQUEST NO. 70:**

All DOCUMENTS identified in YOUR responses to Form Interrogatories Set One served herewith.

PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ, LLP

DATED: February 1, 2018

By: 

LESLIE R. PERRY  
HEATHER-ANN YOUNG  
Attorneys for Plaintiffs  
NICOLETTE LEWIS, ALEXIS LEWIS,  
MARGRETT LEWIS and JEFFREY  
LEWIS

PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ LLP

Ex. 1



**Liberty International Underwriters**

**Combined General & Products Liability Policy**



**Liberty**  
International  
Underwriters



## Policy Schedule

- |                         |  |
|-------------------------|--|
| 1. POLICY NUMBER:       | ME-CAS-12-438176   |
| 2. INSURED:             | The Fire Company Pty Ltd and EcoSmart Inc  |
| 3. PERIOD OF INSURANCE: | From: 30 <sup>th</sup> April 2013 at 4pm local standard time<br>To: 30 <sup>th</sup> April 2014 at 4pm local standard time                           |
| 4. INSURED'S BUSINESS:  | Design, manufacture, distribution, retailer, wholesale and importer of ethanol fire places, burners and accessories.                                 |
| 5. LIMIT OF INDEMNITY:  | AUD20,000,000 any one Occurrence in respect of public liability and in the aggregate during the Period of Insurance in respect of Product liability. |
| 6. DEDUCTIBLES:         | AUD10,000 each and every Occurrence (costs inclusive).<br><br>AUD25,000 each and every Occurrence (costs inclusive) for losses in North America      |
| 7. POLICY WORDING:      | LIU Combined General & Products Liability Policy form LIU-AUS-CAS-CGL-2000001 and attached endorsements.   |
| 8. PREMIUM:             | AUD86,000 (minimum and non-adjustable) plus charges.   |

This Schedule attaches to and forms part of LIU Combined General & Products Liability Policy Form LIU-AUS-CAS-CGL-2000001 and is valid only if it is signed and dated below by a person duly authorised by Liberty International Underwriters.



For and on behalf of  
Liberty International Underwriters

3<sup>rd</sup> May 2013

Date



## Combined General & Products Liability Policy

---

In consideration of the premium being paid by the Insured to LIU and in reliance upon the written statements and declarations contained in the proposal or insurance broker's quotation submission, LIU agrees to indemnify the Insured in accordance with the attached Schedule, Policy wording and endorsements where applicable.

### 1 Insuring Clause

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Subject to the terms of this Policy, LIU will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation in respect of Injury and/or Damage first happening during the Period of Insurance as a result of an Occurrence in connection with the Insured's Business.

### 2 Definitions

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2.1 "Asbestos" means:

2.1.1 That group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite; or

2.1.2 That group of man made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres,

And includes Asbestos Products and Products containing Asbestos.

2.2 "Damage" means:

2.2.1 Physical damage to or destruction of tangible property including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical damage that caused it; or

2.2.2 Loss of use of tangible property that is not physically damaged or destroyed provided such loss of use is caused by physical damage to other tangible property which first happened during the Period of Insurance. All such loss of use shall be deemed to happen at the time of the physical damage or destruction that caused it.

2.3 "Employment Practices" means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, unfair contracts, harassment or discrimination (sexual or otherwise) in respect of employment by the Insured.

2.4 "Injury" means:

2.4.1 Bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;

2.4.2 False arrest, wrongful detention or imprisonment, malicious prosecution;

2.4.3 Wrongful entry or eviction;





- 2.4.4 Assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing Injury and/or Damage or eliminating danger; or
- 2.4.5 Libel, slander, defamation of character or invasion of right of privacy.
- 2.5 "Insured" wherever used in this Policy means the Insured named in the Schedule and:
  - 2.5.1 Any subsidiary company of the Insured incorporated within Australia including subsidiaries thereof; or
  - 2.5.2 Any other entity incorporated within Australia controlled by the Insured and over which the Insured assumes active management.
- 2.6 "Insured's Business" is the business shown in the Schedule.
- 2.7 "LIU" means Liberty International Underwriters. Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, USA (The liability of members is limited).
- 2.8 "Limit of Indemnity" means the amount stated in the Schedule pursuant to Clause 5 of this Policy.
- 2.9 "Occurrence" means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Injury and/or Damage neither expected nor intended from the standpoint of the Insured. All events of a series consequent on or attributable to one source or original cause shall be deemed one Occurrence.
- 2.10 "Period of Insurance" is the period shown in the Policy.
- 2.11 "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, cinders, dust, odours, noise, acids, alkalis, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 2.12 "Product" means any commodity, article or thing (after it has ceased to be in the possession or under the control of the Insured) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the Insured or by others trading under the name of the Insured (including any container thereof other than a motor vehicle).
- 2.13 "Terrorism" means an act or acts:
  - 2.13.1 That are violent in nature or are dangerous to human life:
    - 2.13.1.1 That are a violation of the criminal laws of the United States of America or Australia or of any State or Territory of the United States of America or Australia or that would be a criminal violation if committed within the jurisdiction of the United States of America or Australia or any State or Territory of the United States of America or Australia and that have the apparent intent of:
      - 2.13.1.1.1 Intimidating or coercing any civilian population;
      - 2.13.1.1.2 Influencing the policy of any government by intimidation or coercion; or



- 2.13.1.1.3 Affecting the conduct of any government by mass destruction, assassination or kidnapping.

Or

2.13.2 That result in:

- 2.13.2.1 The denial of access to or services from web sites, computer networks or telecommunication equipment; or
- 2.13.2.2 The malfunction or degradation of web sites, computer networks, telecommunications equipment, mechanical equipment or the interruption to the functioning of web sites or such properties,

And that have the apparent intent of intimidating or coercing any civilian population or influencing the policy of any government by intimidation or coercion.

- 2.14 "Worker" means any person employed by the Insured or deemed to be employed by the Insured whether pursuant to any Workers' Compensation Law or otherwise.
- 2.15 "Workers' Compensation Law" means any law relating to compensation for Injury to Workers or employees.

### 3 Indemnity to Others

---

Subject to the terms of this Policy and in accordance with Insuring Clause 1, this Policy will extend to pay to or on behalf of:

- 3.1 Any principal, in respect of that principal's vicarious liability for the negligent acts or omissions of the Insured pursuant to Definition 2.5 and arising out of the Insured's Business, but this Policy does not extend to the liability of any principal howsoever arising out of the negligence, breach of contract or breach of duty of such principal;
- 3.2 Any director, executive officer or Worker of the Insured or, where the Insured is a partnership, any partner of the Insured, but only while acting within the scope of their duties in such capacity;
- 3.3 The officers, committee and members of the Insured's canteen, social, sports, first aid/medical, fire fighting and employee welfare organisations in their respective capacity as such; or
- 3.4 The legal personal representative of any person entitled to indemnity under this Clause 3 in circumstances giving rise to indemnity under this Policy.

Provided always that all such persons or parties shall, whilst not being a party to this contract, observe, fulfil and be subject to the terms of this Policy in so far as they can apply as though they were the Insured.

### 4 Cross Liabilities

---

Subject at all times to the terms of this Policy, each person or party indemnified is separately indemnified in respect of claims made by any of them against any other of them provided that LIU's total liability shall not exceed the Limit of Indemnity for all claims under this Policy.



## 5 Limit of Indemnity

---

LIU's liability to pay compensation shall not exceed the sum stated in the Schedule in respect of any one claim or series of claims arising from one Occurrence.

The total aggregate liability of LIU for any one Period of Insurance for all claims in respect of or in any way connected with the Insured's Products shall not exceed the Limit of Indemnity stated in the Schedule.

## 6 Defence Costs

---

In addition to the Limit of Indemnity, LIU will pay all reasonable legal costs and/or expenses incurred with LIU's prior written consent in connection with any claim for which the Insured is indemnified by this Policy.

Provided that LIU shall not be liable for legal costs and/or expenses where indemnity is not provided by this Policy.

Provided that LIU shall not be liable for legal costs and/or expenses for or in respect of representation at any formal legal inquiry involving an accident resulting in Injury or at any coroner's inquiry or defending any proceedings in a court of summary jurisdiction.

Provided that LIU shall not pay any legal costs and/or expenses in respect of any Occurrence after LIU has paid compensation up to the Limit of Indemnity.

Provided further that the legal costs and/or expenses incurred in connection with claims made and/or actions instituted within the United States of America or Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries, shall form part of the Limit of Indemnity and will not be payable by LIU in addition to the Limit of Indemnity.

In the event the Insured is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this Policy, the Insured and LIU will use their best efforts to agree upon a fair and proper allocation of legal costs and/or expenses or any other amount insured under this Policy which relate solely to what is covered under this Policy.

In the event that an agreement cannot be reached, a Senior Counsel (to be mutually agreed upon by LIU and the Insured) shall, as an expert and not an arbitrator, determine a fair and proper allocation. Until the Senior Counsel has made a determination LIU may, in its absolute discretion, pay such legal costs and/or expenses or any other amount insured under this Policy as it considers appropriate.

## 7 Exclusions

---

This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

7.1 The ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the Insured of any motor vehicle or trailer which is required by law to be registered or in respect of which there is required by law to be in force a policy of compulsory liability insurance or in relation to which there existed a statutory scheme providing compensation for Injury, but this exclusion does not apply to:

7.1.1 Injury for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law;





- 7.1.2 Injury caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law;
- 7.1.3 Damage caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;
- 7.1.4 Damage to any bridge, weighbridge or road, or anything beneath such bridge, weighbridge or road caused by the weight of any motor vehicle or trailer or of the load carried thereon; or
- 7.1.5 Damage to any motor vehicle or trailer (not owned, leased or hired by, under hire purchase, on loan or rented to the Insured) temporarily in the Insured's custody or control for the purpose of parking and directly arising out of such parking.
- 7.2 Damage to property owned, leased, hired by, under hire purchase, on loan or rented to the Insured or otherwise in the Insured's care, custody or control other than:
  - 7.2.1 Premises (or to contents thereof) temporarily occupied by the Insured for the purpose of carrying out works thereto or thereon, but no indemnity is granted for liability in respect of physical damage to or destruction of that part of any premises or contents on which the Insured is or has been working on if the physical damage or destruction arises from such work;
  - 7.2.2 Premises tenanted by the Insured;
  - 7.2.3 Directors', employees' and visitors' clothing and personal effects; or
  - 7.2.4 Other property not owned by the Insured but temporarily in the Insured's possession provided:
    - 7.2.4.1 No indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which the Insured is or has been working on if the physical damage or destruction arises from such work; and
    - 7.2.4.2 LIU's limit of liability under this Clause 7.2.4 does not exceed AUD100,000 each and every Occurrence and in the aggregate for any one Period of Insurance,

Provided further that no indemnity is granted under this Policy in respect of liability assumed by the Insured under any contract or agreement which requires the Insured to effect material damage insurance on premises, property or goods not owned by the Insured.
- 7.3 Damages claimed for, and/or the costs of withdrawal, recall, inspection, repair, replacement, disposal or loss of use of the Insured's Products or of any property of which such Products form a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.
- 7.4 Damage to the Insured's Products if such Damage is attributable to any defect therein or harmful nature or unsuitability thereof.
- 7.5 The cost of performing, completing, correcting or improving any work undertaken by the Insured.



- 7.6 Any Product guarantee or warranty given by or on behalf of the Insured but this exclusion shall not apply to the requirements of any Federal or State legislation with respect to Product safety and information.
- 7.7 Liability assumed under the terms of a contract, agreement or warranty unless and only to the extent that the Insured would have been liable in the absence of such contract, agreement or warranty.
- 7.8 Liability assumed where the Insured may have been able to recover from another party but for an agreement between the Insured and such party where the Insured has waived, released or abandoned any right of recourse or recovery against any party.
- 7.9 Any Product which is incorporated into the structure, machinery or controls of any aircraft, aerial device, watercraft or hovercraft.
- 7.10 Injury to any Worker.

Provided that if the Insured:

- 7.10.1 Is required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited in amount or not) for such Injury; or
- 7.10.2 Is not required to so insure or otherwise fund such liability by reason only that the Injury is to a person who is not a Worker or "employee" within the meaning of the relevant Workers' Compensation Law or the Injury is not an Injury which is subject to such Law,

Then this Policy will respond to the extent that the Insured's liability would not be covered under any such fund, scheme, policy of insurance or self insurance arrangement had the Insured complied with it's obligations pursuant to such Law.

- 7.11
  - 7.11.1 Any Workers' Compensation Law;
  - 7.11.2 The provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination; or
  - 7.11.3 Employment Practices.
- 7.12 Libel, slander and/or other defamation:
  - 7.12.1 Made prior to the commencement of the Period of Insurance;
  - 7.12.2 Made at the Insured's direction or with the Insured's authority or with knowledge of its falsity; or
  - 7.12.3 Related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the Insured.
- 7.13 The loss of use of tangible property which has not been physically damaged or destroyed resulting from:
  - 7.13.1 A delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or



7.13.2 The failure of any Product to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured but this exclusion does not apply to loss of use of other tangible property directly or indirectly caused by, arising out of or in any way connected with or resulting from the sudden and accidental physical damage to or destruction of the Product after such Product has been put to use by any person or organisation other than the Insured.

7.14 Any change in the nature of the Insured's Business which:

7.14.1 Occurred during the currency of this Policy; and

7.14.2 Was known by the Insured, or would have been known by a reasonable person in the circumstances, to be likely to increase the risk of Injury or Damage for which indemnity is provided by this Policy.

For the purposes of this exclusion, where the Insured is a corporate body, the knowledge of any director or officer of the Insured shall be deemed to be the knowledge of the Insured.

7.15 The rendering of or failure to render professional advice or service or any error or omission connected therewith given for a fee by the Insured or any person covered by Clause 3 of this Policy.

Provided that this exclusion does not apply to the rendering of first aid or medical services on the Insured's premises by medical persons employed by the Insured.

7.16 7.16.1 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;

7.16.2 Testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect;

7.16.3 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others; or

7.16.4 Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants.

Provided always that exclusions 7.16.1, 7.16.2 and 7.16.3 shall not apply to liability which is directly caused by a sudden, accidental, instantaneous, unintended, identifiable and unexpected happening which takes place in its entirety at a specific time and place.

The total aggregate liability of LIU for all claims covered in any one Period of Insurance in respect of the proviso above shall not exceed the Limit of Indemnity shown in the Schedule.

7.17 Injury sustained due to the inhalation or ingestion of, or exposure to:

7.17.1 Tobacco or tobacco smoke; or

7.17.2 Any ingredient or additive present in any articles, items or goods which contain or include tobacco.

7.18 7.18.1 Ionising radiations or contamination from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self sustaining process of nuclear fission or fusion; or





7.18.2 Nuclear weapons material.

7.19 And regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

7.19.1 War and military action which includes without limitation the following:

7.19.1.1 War, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;

7.19.1.2 Warlike action by military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

7.19.1.3 Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

7.19.2 Any actual or threatened act of domestic or international Terrorism committed by a person or persons acting:

7.19.2.1 Alone or on behalf of or in connection with any organisation; or

7.19.2.2 With the goal of furthering any political, social, religious, ideological or similar objective.

7.19.3 Action taken to prevent or defend against an act of Terrorism.

If an act of Terrorism involves chemical or biological weapons, this Terrorism exclusion will still apply.

If an act of Terrorism involves nuclear reaction, nuclear radiation or radioactive contamination, this Terrorism exclusion will apply to liabilities that result from such nuclear reaction or nuclear radiation or radioactive contamination in place of Exclusion 7.18.

7.20 The ownership, maintenance, operation, possession or use by or on behalf of the Insured of:

7.20.1 Any aircraft or aerial device;

7.20.2 Any watercraft exceeding 10 metres in length; or

7.20.3 Any hovercraft.

7.21 The Deductible and/or self insured retention shown in the Schedule.

7.22 The erection, demolition, alteration of and/or addition to buildings by or on behalf of the Insured except for contracts not exceeding in cost the sum of AUD500,000 or 10% of the Limit of Indemnity whichever is the lesser.

7.23 Asbestos.

7.24 7.24.1 Claims made and actions instituted within the United States of America or Canada and their respective territories and protectorates, and any other territory coming within the jurisdiction of the courts of the United States of America or Canada; or



7.24.2 Claims and actions to which the laws of the United States of America or Canada and their respective territories and protectorates apply.

Provided that this exclusion does not apply to claims and actions caused by an employee of the Insured who normally resides in Australia while such employee is temporarily travelling on behalf of the Insured outside Australia.

7.25 Fines, penalties, punitive damages, exemplary damages, multiplication of compensatory damages, liquidated damages and/or aggravated damages.

7.26 Any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of the Insured or any person covered by Clause 3 of this Policy.

## 8 General Conditions

8.1 The Insured shall give written notice to LIU as soon as possible of any claim under this Policy and shall give all such additional information as LIU may require.

8.2 No admission, offer, promise, or payment shall be made or given by or on behalf of the Insured without the prior written consent of LIU who shall be entitled but not obligated to take over the conduct in the name of the Insured of the defence or settlement of any claim or to prosecute in the name of the Insured for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as LIU shall require.

8.3 This Policy and any endorsements attached to this Policy shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.

8.4 The amount shown within the Schedule as a Deductible and/or self insured retention is the first amount for all claims arising out of any one Occurrence which is to be borne by the Insured or any person covered by Clause 3 of this Policy.

8.5 LIU may at any time discharge its total liability to the Insured in respect of any one claim or series of claims arising from one Occurrence by paying to or on behalf of the Insured:

8.5.1 The total amount in respect of such claim to which the Insured is entitled to indemnity under this Policy;

8.5.2 The total amount sought by the claimant for such claim; or

8.5.3 The total amount for which such claim can be settled,

And in addition to such payment LIU will pay Defence Costs incurred up to the date of payment as provided for by Clause 6 of this Policy.

Upon such payment, LIU shall relinquish conduct or control of such claim and be under no further liability under this Policy in connection with such claim including but not limited to Defence Costs.

8.6 This Policy shall be interpreted in accordance with the laws of Australia and all claims for indemnity under this Policy shall be decided in accordance with those laws. All matters arising from or relating to the construction, operation or interpretation of the Policy shall be submitted to the exclusive jurisdiction of the Australian Courts.



8.7 The Insured must:

- 8.7.1 Exercise reasonable care that only competent Workers and/or employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
- 8.7.2 Take all reasonable precautions to:
  - 8.7.2.1 Prevent Injury and Damage;
  - 8.7.2.2 Prevent the manufacture, sale or supply of defective Products; and
  - 8.7.2.3 Comply and ensure that its Workers, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property;
- 8.7.3 At its own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect; and
- 8.7.4 Assist and co-operate fully and promptly with LIU in the investigation, settlement or defence of any claim or matters relating or in connection thereto.

The amount of any benefit under this Policy for any liability caused or contributed to by the lack of such precautions, measures and compliances shall be reduced by the amount that fairly represents the extent to which LIU's interests have been prejudiced thereby.

- 8.8 Where the premium is provisionally based on the Insured's estimates, the Insured shall keep accurate records and after expiry of the Period of Insurance declare as soon as possible such details as LIU requires and the premium shall be adjusted and any difference paid by or allowed to the Insured as the case may be subject to any minimum premium that may apply.
- 8.9 The Insured may cancel this Policy at any time by giving notice in writing to LIU.

LIU may cancel this Policy at any time where:

- 8.9.1 It is entitled to do so pursuant to the *Insurance Contracts Act 1984* or any amendments thereto;
- 8.9.2 The Insured has failed to notify LIU of any specific act or omission where such notification is required under the terms or conditions of this Policy; or
- 8.9.3 The Insured has acted in contravention of or omitted to act in compliance with any term of this Policy which empowers LIU to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by LIU shall take effect either at the time when another contract of insurance between the Insured and LIU or some other insurer (being a contract that is intended by the Insured to replace this Policy) is entered into or at 4pm on the 3rd business day after the date on which notice was given to the Insured by LIU, whichever is the earlier.





Where the Insured comprises more than one person or company, it is agreed that the Insured referred to in the Schedule shall be the agent of each of the other Insured persons or companies or others indemnified by Clause 3 for the purposes of receiving any notice of cancellation pursuant to this General Condition, or any other notice, statement, document or information relating to this Policy.

Where the Insured has a broker, nothing shall restrict LIU's right to notify the broker as agent of the Insured.

- 8.10 Notwithstanding anything else to the contrary in the Policy, whenever coverage provided by this Policy would be in violation of any applicable economic, trade or other sanction or law, such coverage shall be null and void and LIU has no obligation to pay a claim if to do so would breach that sanction or law.
- 8.11
  - 8.11.1 Words importing persons shall include corporations and other legal entities;
  - 8.11.2 References in the singular shall be deemed to include the plural and vice versa;
  - 8.11.3 Words depicting any gender include reference to all other genders;
  - 8.11.4 References to any legislation or subordinate instruments shall refer to such legislation or subordinate instruments as amended from time to time and in force; and
  - 8.11.5 Headings have been included for ease of reference and it is understood and agreed that this Policy is not to be construed or interpreted by reference to such headings.
- 8.12 Each Insured agrees that LIU may issue by electronic mail or post any notices required to be given under the Insurance Contracts Act or otherwise.
- 8.13 Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company ("LMIC"), a stock insurance company incorporated in Massachusetts USA. LMIC is an indirect subsidiary of Liberty Mutual Holding Company Inc. ("LMHC"), a Massachusetts USA mutual holding company. NOTICE IS HEREBY GIVEN that the annual meeting of LMHC is held on the second Wednesday in April of each year at ten o'clock in the morning, local time, at LMHC's office at 175 Berkeley Street, Boston, Massachusetts USA. This notice is for members of LMHC only. One becomes a member of LMHC by virtue of being a policyholder of LMIC. Membership rights terminate when one ceases to be a policyholder of LMIC. Members of LMHC may request a copy of LMHC's annual financial statements, which are posted on Liberty Mutual's website at [www.libertymutual.com](http://www.libertymutual.com) by writing to Liberty Mutual Holding Company Inc., 175 Berkeley Street, Boston, Massachusetts 02116.

Signed on behalf of Liberty International Underwriters



For and on behalf of  
Liberty International Underwriters

3<sup>rd</sup> May 2013

Date



Endorsements attaching to and forming part of Policy Number ME-CAS-12-438176

Insured: The Fire Company Pty Ltd and EcoSmart Inc

Endorsements effective from: 30<sup>th</sup> April 2013

**Endorsement 1.**

**USA – Canada (incl. Domiciled Operations & Jurisdiction)**

The following amendments are made to this Policy in respect of the Insured's operations and the Insured's Products exported by the Insured to the United States of America or Canada:

1. In respect to the Insured's operations domiciled in the United States of America or Canada only and Products exported to the United States of America or Canada, Exclusion 7.16 is deleted and replaced by the following:
  - 7.16 7.16.1 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;
  - 7.16.2 Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;
  - 7.16.3 Testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect;
  - 7.16.4 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others.
2. Exclusion 7.24 is deleted.

**Endorsement 2.**

**Vendors Liability**

1. Clause 3 **Indemnity to Others**, is extended to include the following:
  - 3.5 Any person or organisation designated below in the Schedule of Vendors (herein referred to as "Vendor") but only with respect to the distribution or sale of the Insured's Products provided always that the Vendor shall observe, fulfill and be subject to the terms, conditions, limitations and exclusions of this Policy in so far as they can apply as though they were the Insured.

This endorsement does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

  1. Any warranty given by the Vendor;
  2. Any liability assumed by the Vendor under contract or agreement which would not have attached in the absence of such contract or agreement;
  3. The distribution or sale for a purpose unauthorised by the Insured;
  4. Any act, error or omission of the Vendor which changes the condition of any Product;
  5. The failure by the Vendor to maintain any Product in merchantable condition;



6. Any failure to make such inspections, adjustments, tests or servicing as the Vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of any Product;
7. Any Product which after distribution or sale by the Insured has been labelled, relabelled, packaged, repackaged or replaced by the Vendor;
8. Any Product which after distribution or sale by the Insured is used as a container, part or ingredient of any other product, thing or substance by or for the Vendor;
9. The demonstration, assembly, installation, servicing or repair of any Product by the Vendor;
10. Any Injury or Damage happening within the Vendor's premises;
11. The liability of any person or organisation from whom the Insured has acquired any Product or any ingredient or part contained in or forming part of such Product or container accompanying or containing such Product; or
12. Any Product design, formula or specification supplied by the Vendor.

2. Schedule Of Vendors

Name

Room and Board Inc

Address

4600 Olson Memorial Hwy Frontage Road  
Minneapolis, MN 55422 USA

Nothing contained in these endorsements shall in any way serve to increase the Limit of Indemnity stated in the Schedule.

Other than as amended above, the terms of this Policy shall continue to apply.



For and on behalf of  
Liberty International Underwriters

3<sup>rd</sup> May 2013

Date



Ex. 2

**Liberty International Underwriters**

**Combined General & Products Liability Policy**



**Liberty**  
International  
Underwriters



## Policy Schedule

1. POLICY NUMBER: SY-CAS-13-438176
2. INSURED: The Fire Company Pty Ltd and EcoSmart Inc
3. PERIOD OF INSURANCE: From: 30<sup>th</sup> April 2014 at 4pm local standard time  
To: 30<sup>th</sup> April 2015 at 4pm local standard time
4. INSURED'S BUSINESS: Design, manufacture, distribution, retailer, wholesaler and importer of ethanol fireplaces, burners and accessories.
5. LIMIT OF INDEMNITY: AUD20,000,000 any one Occurrence in respect of public liability and in the aggregate during the Period of Insurance in respect of Product liability.
6. DEDUCTIBLES: AUD10,000 each and every Occurrence (costs inclusive).  
  
Other than in respect of claims for Injury to contractors, subcontractors and/or labour hire workers for which the Deductible is AUD 25,000 any one Occurrence (costs inclusive) and for losses in North America arising out of any fuel whether supplied by the Insured or by a third party vendor and/or any device intended to hold, store, decant or transport fuel which is AUD 250,000 any one Occurrence (cost inclusive).
7. POLICY WORDING: LIU Combined General & Products Liability Policy form LIU-AUS-CAS-CGL-2000001 and attached endorsements.
8. PREMIUM: AUD150,000 plus charges.

This Schedule attaches to and forms part of LIU Combined General & Products Liability Policy Form LIU-AUS-CAS-CGL-2000001 and is valid only if it is signed and dated below by a person duly authorised by Liberty International Underwriters.



For and on behalf of  
Liberty International Underwriters

8<sup>th</sup> July 2014

Date





## Combined General & Products Liability Policy

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In consideration of the premium being paid by the Insured to LIU and in reliance upon the written statements and declarations contained in the proposal or insurance broker's quotation submission, LIU agrees to indemnify the Insured in accordance with the attached Schedule, Policy wording and endorsements where applicable.

### 1 Insuring Clause

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Subject to the terms of this Policy, LIU will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation in respect of Injury and/or Damage first happening during the Period of Insurance as a result of an Occurrence in connection with the Insured's Business.

### 2 Definitions

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- 2.1 "Asbestos" means:
  - 2.1.1 That group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite; or
  - 2.1.2 That group of man made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres,And includes Asbestos Products and Products containing Asbestos.
- 2.2 "Damage" means:
  - 2.2.1 Physical damage to or destruction of tangible property including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical damage that caused it; or
  - 2.2.2 Loss of use of tangible property that is not physically damaged or destroyed provided such loss of use is caused by physical damage to other tangible property which first happened during the Period of Insurance. All such loss of use shall be deemed to happen at the time of the physical damage or destruction that caused it.
- 2.3 "Employment Practices" means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, unfair contracts, harassment or discrimination (sexual or otherwise) in respect of employment by the Insured.
- 2.4 "Injury" means:
  - 2.4.1 Bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
  - 2.4.2 False arrest, wrongful detention or imprisonment, malicious prosecution;
  - 2.4.3 Wrongful entry or eviction;



- 2.4.4 Assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing injury and/or Damage or eliminating danger; or
- 2.4.5 Libel, slander, defamation of character or invasion of right of privacy.
- 2.5 "Insured" wherever used in this Policy means the Insured named in the Schedule and:
  - 2.5.1 Any subsidiary company of the Insured incorporated within Australia including subsidiaries thereof; or
  - 2.5.2 Any other entity incorporated within Australia controlled by the Insured and over which the Insured assumes active management.
- 2.6 "Insured's Business" is the business shown in the Schedule.
- 2.7 "LIU" means Liberty International Underwriters. Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, USA (The liability of members is limited).
- 2.8 "Limit of Indemnity" means the amount stated in the Schedule pursuant to Clause 5 of this Policy.
- 2.9 "Occurrence" means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Injury and/or Damage neither expected nor intended from the standpoint of the Insured. All events of a series consequent on or attributable to one source or original cause shall be deemed one Occurrence.
- 2.10 "Period of Insurance" is the period shown in the Policy.
- 2.11 "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, cinders, dust, odours, noise, acids, alkalis, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 2.12 "Product" means any commodity, article or thing (after it has ceased to be in the possession or under the control of the Insured) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the Insured or by others trading under the name of the Insured (including any container thereof other than a motor vehicle).
- 2.13 "Terrorism" means an act or acts:
  - 2.13.1 That are violent in nature or are dangerous to human life:
    - 2.13.1.1 That are a violation of the criminal laws of the United States of America or Australia or of any State or Territory of the United States of America or Australia or that would be a criminal violation if committed within the jurisdiction of the United States of America or Australia or any State or Territory of the United States of America or Australia and that have the apparent intent of:
      - 2.13.1.1.1 Intimidating or coercing any civilian population;
      - 2.13.1.1.2 Influencing the policy of any government by intimidation or coercion; or



- 2.13.1.1.3 Affecting the conduct of any government by mass destruction, assassination or kidnapping,

Or

- 2.13.2 That result in:

- 2.13.2.1 The denial of access to or services from web sites, computer networks or telecommunication equipment, or
- 2.13.2.2 The malfunction or degradation of web sites, computer networks, telecommunications equipment, mechanical equipment or the interruption to the functioning of web sites or such properties,

And that have the apparent intent of intimidating or coercing any civilian population or influencing the policy of any government by intimidation or coercion.

- 2.14 "Worker" means any person employed by the Insured or deemed to be employed by the Insured whether pursuant to any Workers' Compensation Law or otherwise.
- 2.15 "Workers' Compensation Law" means any law relating to compensation for Injury to Workers or employees.

### 3 Indemnity to Others

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Subject to the terms of this Policy and in accordance with Insuring Clause 1, this Policy will extend to pay to or on behalf of:

- 3.1 Any principal, in respect of that principal's vicarious liability for the negligent acts or omissions of the Insured pursuant to Definition 2.5 and arising out of the Insured's Business, but this Policy does not extend to the liability of any principal howsoever arising out of the negligence, breach of contract or breach of duty of such principal;
- 3.2 Any director, executive officer or Worker of the Insured or, where the Insured is a partnership, any partner of the Insured, but only while acting within the scope of their duties in such capacity;
- 3.3 The officers, committee and members of the Insured's canteen, social, sports, first aid/medical, fire fighting and employee welfare organisations in their respective capacity as such; or
- 3.4 The legal personal representative of any person entitled to indemnity under this Clause 3 in circumstances giving rise to indemnity under this Policy.

Provided always that all such persons or parties shall, whilst not being a party to this contract, observe, fulfil and be subject to the terms of this Policy in so far as they can apply as though they were the Insured.

### 4 Cross Liabilities

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Subject at all times to the terms of this Policy, each person or party indemnified is separately indemnified in respect of claims made by any of them against any other of them provided that LIU's total liability shall not exceed the Limit of Indemnity for all claims under this Policy.





## 5 Limit of Indemnity

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LIU's liability to pay compensation shall not exceed the sum stated in the Schedule in respect of any one claim or series of claims arising from one Occurrence.

The total aggregate liability of LIU for any one Period of Insurance for all claims in respect of or in any way connected with the Insured's Products shall not exceed the Limit of Indemnity stated in the Schedule.

## 6 Defence Costs

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In addition to the Limit of Indemnity, LIU will pay all reasonable legal costs and/or expenses incurred with LIU's prior written consent in connection with any claim for which the Insured is indemnified by this Policy.

Provided that LIU shall not be liable for legal costs and/or expenses where indemnity is not provided by this Policy.

Provided that LIU shall not be liable for legal costs and/or expenses for or in respect of representation at any formal legal inquiry involving an accident resulting in Injury or at any coroner's inquiry or defending any proceedings in a court of summary jurisdiction.

Provided that LIU shall not pay any legal costs and/or expenses in respect of any Occurrence after LIU has paid compensation up to the Limit of Indemnity.

Provided further that the legal costs and/or expenses incurred in connection with claims made and/or actions instituted within the United States of America or Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries, shall form part of the Limit of Indemnity and will not be payable by LIU in addition to the Limit of Indemnity.

In the event the Insured is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this Policy, the Insured and LIU will use their best efforts to agree upon a fair and proper allocation of legal costs and/or expenses or any other amount insured under this Policy which relate solely to what is covered under this Policy.

In the event that an agreement cannot be reached, a Senior Counsel (to be mutually agreed upon by LIU and the Insured) shall, as an expert and not an arbitrator, determine a fair and proper allocation. Until the Senior Counsel has made a determination LIU may, in its absolute discretion, pay such legal costs and/or expenses or any other amount insured under this Policy as it considers appropriate.

## 7 Exclusions

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This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

7.1 The ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the Insured of any motor vehicle or trailer which is required by law to be registered or in respect of which there is required by law to be in force a policy of compulsory liability insurance or in relation to which there existed a statutory scheme providing compensation for Injury, but this exclusion does not apply to:

7.1.1 Injury for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law;



- 7.1.2 Injury caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law;
  - 7.1.3 Damage caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;
  - 7.1.4 Damage to any bridge, weighbridge or road, or anything beneath such bridge, weighbridge or road caused by the weight of any motor vehicle or trailer or of the load carried thereon; or
  - 7.1.5 Damage to any motor vehicle or trailer (not owned, leased or hired by, under hire purchase, on loan or rented to the Insured) temporarily in the Insured's custody or control for the purpose of parking and directly arising out of such parking.
- 7.2 Damage to property owned, leased, hired by, under hire purchase, on loan or rented to the Insured or otherwise in the Insured's care, custody or control other than:
- 7.2.1 Premises (or to contents thereof) temporarily occupied by the Insured for the purpose of carrying out works thereto or thereon, but no indemnity is granted for liability in respect of physical damage to or destruction of that part of any premises or contents on which the Insured is or has been working on if the physical damage or destruction arises from such work;
  - 7.2.2 Premises tenanted by the Insured;
  - 7.2.3 Directors', employees' and visitors' clothing and personal effects; or
  - 7.2.4 Other property not owned by the Insured but temporarily in the Insured's possession provided:
    - 7.2.4.1 No indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which the Insured is or has been working on if the physical damage or destruction arises from such work; and
    - 7.2.4.2 LIU's limit of liability under this Clause 7.2.4 does not exceed AUD100,000 each and every Occurrence and in the aggregate for any one Period of Insurance.
- Provided further that no indemnity is granted under this Policy in respect of liability assumed by the Insured under any contract or agreement which requires the Insured to effect material damage insurance on premises, property or goods not owned by the Insured.
- 7.3 Damages claimed for, and/or the costs of withdrawal, recall, inspection, repair, replacement, disposal or loss of use of the Insured's Products or of any property of which such Products form a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.
  - 7.4 Damage to the Insured's Products if such Damage is attributable to any defect therein or harmful nature or unsuitability thereof.
  - 7.5 The cost of performing, completing, correcting or improving any work undertaken by the Insured.



- 7.6 Any Product guarantee or warranty given by or on behalf of the Insured but this exclusion shall not apply to the requirements of any Federal or State legislation with respect to Product safety and information.
- 7.7 Liability assumed under the terms of a contract, agreement or warranty unless and only to the extent that the Insured would have been liable in the absence of such contract, agreement or warranty.
- 7.8 Liability assumed where the Insured may have been able to recover from another party but for an agreement between the Insured and such party where the Insured has waived, released or abandoned any right of recourse or recovery against any party.
- 7.9 Any Product which is incorporated into the structure, machinery or controls of any aircraft, aerial device, watercraft or hovercraft.
- 7.10 Injury to any Worker.

Provided that if the Insured:

- 7.10.1 Is required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited in amount or not) for such Injury; or
- 7.10.2 Is not required to so insure or otherwise fund such liability by reason only that the Injury is to a person who is not a Worker or "employee" within the meaning of the relevant Workers' Compensation Law or the Injury is not an Injury which is subject to such Law.

Then this Policy will respond to the extent that the Insured's liability would not be covered under any such fund, scheme, policy of insurance or self insurance arrangement had the Insured complied with it's obligations pursuant to such Law.

- 7.11 7.11.1 Any Workers' Compensation Law;
- 7.11.2 The provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination; or
- 7.11.3 Employment Practices.
- 7.12 Libel, slander and/or other defamation;
- 7.12.1 Made prior to the commencement of the Period of Insurance;
- 7.12.2 Made at the Insured's direction or with the Insured's authority or with knowledge of its falsity; or
- 7.12.3 Related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the Insured.
- 7.13 The loss of use of tangible property which has not been physically damaged or destroyed resulting from:
- 7.13.1 A delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or





7.13.2 The failure of any Product to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured but this exclusion does not apply to loss of use of other tangible property directly or indirectly caused by, arising out of or in any way connected with or resulting from the sudden and accidental physical damage to or destruction of the Product after such Product has been put to use by any person or organisation other than the Insured.

7.14 Any change in the nature of the Insured's Business which:

7.14.1 Occurred during the currency of this Policy; and

7.14.2 Was known by the Insured, or would have been known by a reasonable person in the circumstances, to be likely to increase the risk of Injury or Damage for which indemnity is provided by this Policy.

For the purposes of this exclusion, where the Insured is a corporate body, the knowledge of any director or officer of the Insured shall be deemed to be the knowledge of the Insured.

7.15 The rendering of or failure to render professional advice or service or any error or omission connected therewith given for a fee by the Insured or any person covered by Clause 3 of this Policy.

Provided that this exclusion does not apply to the rendering of first aid or medical services on the Insured's premises by medical persons employed by the Insured.

7.16 7.16.1 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;

7.16.2 Testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect;

7.16.3 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others; or

7.16.4 Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants.

Provided always that exclusions 7.16.1, 7.16.2 and 7.16.3 shall not apply to liability which is directly caused by a sudden, accidental, instantaneous, unintended, identifiable and unexpected happening which takes place in its entirety at a specific time and place.

The total aggregate liability of LIU for all claims covered in any one Period of Insurance in respect of the proviso above shall not exceed the Limit of Indemnity shown in the Schedule.

7.17 Injury sustained due to the inhalation or ingestion of, or exposure to:

7.17.1 Tobacco or tobacco smoke; or

7.17.2 Any ingredient or additive present in any articles, items or goods which contain or include tobacco.

7.18 7.18.1 Ionising radiations or contamination from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self sustaining process of nuclear fission or fusion; or



7.18.2 Nuclear weapons material.

7.19 And regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

7.19.1 War and military action which includes without limitation the following:

7.19.1.1 War, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;

7.19.1.2 Warlike action by military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

7.19.1.3 Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

7.19.2 Any actual or threatened act of domestic or international Terrorism committed by a person or persons acting:

7.19.2.1 Alone or on behalf of or in connection with any organisation; or

7.19.2.2 With the goal of furthering any political, social, religious, ideological or similar objective.

7.19.3 Action taken to prevent or defend against an act of Terrorism.

If an act of Terrorism involves chemical or biological weapons, this Terrorism exclusion will still apply.

If an act of Terrorism involves nuclear reaction, nuclear radiation or radioactive contamination, this Terrorism exclusion will apply to liabilities that result from such nuclear reaction or nuclear radiation or radioactive contamination in place of Exclusion 7.18.

7.20 The ownership, maintenance, operation, possession or use by or on behalf of the Insured of:

7.20.1 Any aircraft or aerial device;

7.20.2 Any watercraft exceeding 10 metres in length; or

7.20.3 Any hovercraft.

7.21 The Deductible and/or self insured retention shown in the Schedule.

7.22 The erection, demolition, alteration of and/or addition to buildings by or on behalf of the Insured except for contracts not exceeding in cost the sum of AUD500,000 or 10% of the Limit of Indemnity whichever is the lesser.

7.23 Asbestos.

7.24 7.24.1 Claims made and actions instituted within the United States of America or Canada and their respective territories and protectorates, and any other territory coming within the jurisdiction of the courts of the United States of America or Canada; or



7.24.2 Claims and actions to which the laws of the United States of America or Canada and their respective territories and protectorates apply.

Provided that this exclusion does not apply to claims and actions caused by an employee of the Insured who normally resides in Australia while such employee is temporarily travelling on behalf of the Insured outside Australia.

7.25 Fines, penalties, punitive damages, exemplary damages, multiplication of compensatory damages, liquidated damages and/or aggravated damages.

7.26 Any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of the Insured or any person covered by Clause 3 of this Policy.

## 8 General Conditions

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8.1 The Insured shall give written notice to LIU as soon as possible of any claim under this Policy and shall give all such additional information as LIU may require.

8.2 No admission, offer, promise, or payment shall be made or given by or on behalf of the Insured without the prior written consent of LIU who shall be entitled but not obligated to take over the conduct in the name of the Insured of the defence or settlement of any claim or to prosecute in the name of the Insured for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as LIU shall require.

8.3 This Policy and any endorsements attached to this Policy shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.

8.4 The amount shown within the Schedule as a Deductible and/or self insured retention is the first amount for all claims arising out of any one Occurrence which is to be borne by the Insured or any person covered by Clause 3 of this Policy.

8.5 LIU may at any time discharge its total liability to the Insured in respect of any one claim or series of claims arising from one Occurrence by paying to or on behalf of the Insured:

8.5.1 The total amount in respect of such claim to which the Insured is entitled to indemnity under this Policy;

8.5.2 The total amount sought by the claimant for such claim; or

8.5.3 The total amount for which such claim can be settled.

And in addition to such payment LIU will pay Defence Costs incurred up to the date of payment as provided for by Clause 6 of this Policy.

Upon such payment, LIU shall relinquish conduct or control of such claim and be under no further liability under this Policy in connection with such claim including but not limited to Defence Costs.

8.6 This Policy shall be interpreted in accordance with the laws of Australia and all claims for indemnity under this Policy shall be decided in accordance with those laws. All matters arising from or relating to the construction, operation or interpretation of the Policy shall be submitted to the exclusive jurisdiction of the Australian Courts.





8.7 The Insured must:

8.7.1 Exercise reasonable care that only competent Workers and/or employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;

8.7.2 Take all reasonable precautions to:

8.7.2.1 Prevent Injury and Damage;

8.7.2.2 Prevent the manufacture, sale or supply of defective Products; and

8.7.2.3 Comply and ensure that its Workers, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property;

8.7.3 At its own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect; and

8.7.4 Assist and co-operate fully and promptly with LIU in the investigation, settlement or defence of any claim or matters relating or in connection thereto.

The amount of any benefit under this Policy for any liability caused or contributed to by the lack of such precautions, measures and compliances shall be reduced by the amount that fairly represents the extent to which LIU's interests have been prejudiced thereby.

8.8 Where the premium is provisionally based on the Insured's estimates, the Insured shall keep accurate records and after expiry of the Period of Insurance declare as soon as possible such details as LIU requires and the premium shall be adjusted and any difference paid by or allowed to the Insured as the case may be subject to any minimum premium that may apply.

8.9 The Insured may cancel this Policy at any time by giving notice in writing to LIU.

LIU may cancel this Policy at any time where:

8.9.1 It is entitled to do so pursuant to the *Insurance Contracts Act 1984* or any amendments thereto;

8.9.2 The Insured has failed to notify LIU of any specific act or omission where such notification is required under the terms or conditions of this Policy; or

8.9.3 The Insured has acted in contravention of or omitted to act in compliance with any term of this Policy which empowers LIU to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by LIU shall take effect either at the time when another contract of insurance between the Insured and LIU or some other insurer (being a contract that is intended by the Insured to replace this Policy) is entered into or at 4pm on the 3rd business day after the date on which notice was given to the Insured by LIU, whichever is the earlier.



Where the Insured comprises more than one person or company, it is agreed that the Insured referred to in the Schedule shall be the agent of each of the other Insured persons or companies or others indemnified by Clause 3 for the purposes of receiving any notice of cancellation pursuant to this General Condition, or any other notice, statement, document or information relating to this Policy.

Where the Insured has a broker, nothing shall restrict LIU's right to notify the broker as agent of the Insured.

- 8.10 Notwithstanding anything else to the contrary in the Policy, whenever coverage provided by this Policy would be in violation of any applicable economic, trade or other sanction or law, such coverage shall be null and void and LIU has no obligation to pay a claim if to do so would breach that sanction or law.
- 8.11
  - 8.11.1 Words importing persons shall include corporations and other legal entities;
  - 8.11.2 References in the singular shall be deemed to include the plural and vice versa;
  - 8.11.3 Words depicting any gender include reference to all other genders;
  - 8.11.4 References to any legislation or subordinate instruments shall refer to such legislation or subordinate instruments as amended from time to time and in force; and
  - 8.11.5 Headings have been included for ease of reference and it is understood and agreed that this Policy is not to be construed or interpreted by reference to such headings.
- 8.12 Each Insured agrees that LIU may issue by electronic mail or post any notices required to be given under the Insurance Contracts Act or otherwise.
- 8.13 Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company ("LMIC"), a stock insurance company incorporated in Massachusetts USA. LMIC is an indirect subsidiary of Liberty Mutual Holding Company Inc. ("LMHC"), a Massachusetts USA mutual holding company. NOTICE IS HEREBY GIVEN that the annual meeting of LMHC is held on the second Wednesday in April of each year at ten o'clock in the morning, local time, at LMHC's office at 175 Berkeley Street, Boston, Massachusetts USA. This notice is for members of LMHC only. One becomes a member of LMHC by virtue of being a policyholder of LMIC. Membership rights terminate when one ceases to be a policyholder of LMIC. Members of LMHC may request a copy of LMHC's annual financial statements, which are posted on Liberty Mutual's website at [www.libertymutual.com](http://www.libertymutual.com) by writing to Liberty Mutual Holding Company Inc., 175 Berkeley Street, Boston, Massachusetts 02116.

Signed on behalf of Liberty International Underwriters



For and on behalf of  
Liberty International Underwriters

8<sup>th</sup> July 2014

Date



Endorsements attaching to and forming part of Policy Number SY-CAS-13-438176

Insured: The Fire Company Ply Ltd

Endorsements effective from: 30<sup>th</sup> April 2014

**Endorsement 1.**

**Contractual Liability Extension for Designated Contracts (Waiver of Subrogation and Indemnity)**

Exclusions 7.7 and 7.8 are deleted and replaced by the following:

- 7.7 Liability assumed under the terms of a contract, agreement or warranty unless and only to the extent that the Insured would have been liable in the absence of such contract, agreement or warranty;
- 7.8 Liability assumed where the Insured may have been able to recover from another party but for an agreement between the Insured and such party where the Insured has waived, released or abandoned any right of recourse or recovery against any party.

Provided that these exclusions shall not apply to the following Designated Contracts:

**DESIGNATED CONTRACTS**

Trademark License Agreement with Brown Jordan International Inc.

**Endorsement 2.**

**Vendors Liability**

- 1. Clause 3 Indemnity to Others, is extended to include the following:

- 3.5 Any person or organisation designated below in the Schedule of Vendors (herein referred to as "Vendor") but only with respect to the distribution or sale of the Insured's Products provided always that the Vendor shall observe, fulfill and be subject to the terms, conditions, limitations and exclusions of this Policy in so far as they can apply as though they were the Insured.

This endorsement does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

- 1. Any warranty given by the Vendor;
- 2. Any liability assumed by the Vendor under contract or agreement which would not have attached in the absence of such contract or agreement;
- 3. The distribution or sale for a purpose unauthorised by the Insured;
- 4. Any act, error or omission of the Vendor which changes the condition of any Product;
- 5. The failure by the Vendor to maintain any Product in merchantable condition;
- 6. Any failure to make such inspections, adjustments, tests or servicing as the Vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of any Product;





7. Any Product which after distribution or sale by the Insured has been labelled, relabelled, packaged, repackaged or replaced by the Vendor;
8. Any Product which after distribution or sale by the Insured is used as a container, part or ingredient of any other product, thing or substance by or for the Vendor;
9. The demonstration, assembly, installation, servicing or repair of any Product by the Vendor;
10. Any Injury or Damage happening within the Vendor's premises;
11. The liability of any person or organisation from whom the Insured has acquired any Product or any ingredient or part contained in or forming part of such Product or container accompanying or containing such Product; or
12. Any Product design, formula or specification supplied by the Vendor.

2. Schedule Of Vendors

Name

Room and Board Inc

Address

4600 Olson Memorial Highway, Frontage Road  
Minneapolis, MN 55422 USA

Endorsement 3.

USA/Canada Domiciled Operations & Jurisdiction

Definitions

For the avoidance of doubt, the definitions contained in clause 2 of the Policy apply for the purposes of this endorsement and no regard shall be had to specific definitions included for the purpose of other endorsements.

The Policy is amended as set out below but only in respect of:

- a. the Insured's operations domiciled in the United States of America and/or Canada; and
- b. any Product manufactured, distributed or exported within the United States of America and/or Canada.

1. Exclusion 7.16 is deleted and replaced by the following:

- 7.16 7.16.1 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;
- 7.16.2 Testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect;
- 7.16.3 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others; or



7.16.4 Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants.

2. Exclusion 7.24 is deleted and replaced with the following.

7.24 Claims made and actions instituted within the United States of America or Canada and their respective territories and protectorates, and any other territory coming within the jurisdiction of the courts of the United States of America or Canada arising out of or anyway connected with:

7.24.1 any fuel; and/or

7.24.2 any Product intended to hold, store, decant, or transport fuel of any kind.

7.24.3 However, this exclusion shall not apply to any fuel or Product intended to hold, store, decant, or transport fuel of any kind that:

7.24.3.1 was manufactured by or at the direction of the Insured in strict compliance with the engineering specifications expressly approved by LIU; and

7.24.3.2 was fitted with a flame arrester in circumstances where both the flame arrester and the manner of installation were each expressly approved by LIU; and

7.24.3.3 is the subject of definitive evidence showing that the fuel or Product intended to hold, store, decant, or transport fuel was purchased by a third party (not including a retailer or wholesaler) on or after 18<sup>th</sup> June 2014.

LIU's Limit of Indemnity under clause 7.24.3 shall not, in any event, exceed AUD 2,500,000 each and every Occurrence and in the aggregate for any one Period of Insurance.

Furthermore, the Insured is entitled under clause 7.24.3 to a maximum of two (2) Product liability limit reinstatements. Accordingly, LIU will provide two (2) reinstatement/s of AUD 2,500,000 any one Occurrence and in the aggregate, in respect of Product liability if the Limit of Indemnity applying to clause 7.24.3 is exhausted due to the payment of amounts insured under this Policy, but:

a. LIU will only provide such reinstatement/s if cover available under any policy or policies in excess of this Policy has been exhausted; and



- b. provided always that LIU will pay no more than a single Limit of Indemnity in respect of each Occurrence insured under this Policy.

**Endorsement 4.**

**Existing Products Endorsement (Claims Made)**

Retroactive Date: 30<sup>th</sup> April 2014  
Endorsement Period: From: 30<sup>th</sup> April 2014  
To: 30<sup>th</sup> June 2014  
At 4pm local standard time

**1. Notice to the Insured**

This endorsement provides cover on a Claims made and notified basis.

- 1.1 A Claim must be made against the Insured during the Endorsement Period; and  
1.2 The Insured must notify LIU in writing of such Claim during the Endorsement Period.

**2. Insuring Clause**

Subject to the terms and conditions of the Policy and this endorsement, LIU will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation as a result of a Claim both first made against the Insured and notified to LIU during the Endorsement Period for Injury and/or Damage, first happening after the Retroactive Date as a result of an Occurrence in connection with the Insured's Product exported to or distributed within North America.

**3. Definitions**

**3.1 "Claim" means:**

- 3.1.1 Any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counterclaim or third or similar party notice issued against or served upon the Insured; or  
3.1.2 The receipt by the Insured of any written or verbal notice of demand for compensation made by a third party against the Insured.

**3.2 For the purposes of this extension only, Definition 2.12 "Product" is deleted and replaced by the following:**

"Product" means any fuel source or device intended to house, store, decant, or transport fuel which has not been fitted a flame arrester.





3.3 "Retroactive Date" means the date specified in this Endorsement.

3.4 "Endorsement Period" means the period specified in this endorsement.

4. Limit of Indemnity

LIU's liability to pay compensation under this endorsement shall not exceed AUD 2,500,000 any one Claim and in the aggregate during the Endorsement Period.

Further, all payments made under this endorsement will also contribute towards the exhaustion of the aggregate Limit of Indemnity in respect of Products liability shown on the Policy Schedule.

All claims of a series consequent on or attributable to one source or original cause shall be deemed one Claim.

A deductible of AUD 250,000 each and every Claim (costs inclusive) shall be borne by the Insured at their own risk and LIU's liability shall only be in excess of this amount.

5. Defence Costs

LIU agrees to pay all legal costs and expenses incurred with LIU's prior written consent in connection with any Claim for which indemnity is available under this endorsement, provided that such legal costs and expenses are included within the Limit of Indemnity applicable to this endorsement.

Provided that LIU shall not be liable for legal costs and/or expenses where indemnity is not provided by this endorsement.

In the event the Insured is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this endorsement, the Insured and LIU will use their best efforts to agree upon a fair and proper allocation of legal costs and/or expenses or any other amount insured under this endorsement which relate solely to what is covered under this endorsement.

In the event that an agreement cannot be reached, a Senior Counsel (to be mutually agreed upon by LIU and the Insured) shall, as an expert and not an arbitrator, determine a fair and proper allocation. Until the Senior Counsel has made a determination LIU may, in its absolute discretion, pay such legal costs and/or expenses or any other amount insured under this endorsement as it considers appropriate.

6. Exclusions



For the purposes of this endorsement only:

6.1 Exclusion 7.16 is deleted and replaced by the following:

7.16

7.16.1 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;

7.16.2 Testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect;

7.16.3 The actual, alleged or threatened discharge, dispersal, release; seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others; or

7.16.4 Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants.

6.2 Exclusion 7.24 is deleted

6.3 The following additional exclusions apply:

6.3.1 Any Claim arising out of an Injury / Damage first happening prior to the Retroactive Date.

6.3.2 Any Claim made prior to or existing at the inception of this endorsement.

6.3.3 Any Claim in respect of any fact or circumstance known to the Insured prior to or existing at the inception of this endorsement and which the Insured knew or ought reasonably to have known might give rise to a Claim.

6.3.4 Any Claim or circumstances likely to give rise to a Claim stated in the underwriting submission or proposal form, being the basis of the contract.

7. Conditions

7.1 In the event of a Claim, the Insured must give immediate notice in writing to LIU of such Claim and such information as LIU may require to reasonably investigate the Claim and to enable LIU to determine its liability under this Policy.

Nothing contained in these endorsements shall in any way serve to increase the Limit of Indemnity stated in the Schedule.



Other than as amended above, the terms of this Policy shall continue to apply

A handwritten signature in dark ink, appearing to be "V. Jones".



For and on behalf of  
Liberty International Underwriters

8<sup>th</sup> July 2014

Date



Ex. 3

William D. Anderson, Bar No. 53071  
 David F. Beach, Bar No. 127135  
 PERRY, JOHNSON, ANDERSON,  
 MILLER & MOSKOWITZ, LLP  
 438 1<sup>st</sup> Street, 4<sup>th</sup> Floor  
 Santa Rosa, California 95401  
 Telephone: (707) 525-8800  
 Facsimile: (707) 545-8242

Attorneys for Plaintiffs  
 MARGRETT LEWIS, individually and as  
 Guardian Ad Litem for NICOLETTE  
 LEWIS and ALEXIS LEWIS; and JEFFREY  
 LEWIS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SONOMA

MARGRETT LEWIS, individually and as  
 Guardian Ad Litem for NICOLETTE  
 LEWIS and ALEXIS LEWIS; and  
 JEFFREY LEWIS,

Plaintiffs,

v.

ECOSMART, INC.; THE FIRE  
 COMPANY, PTY, LTD; OUTDOOR  
 ARCHITECTURAL ACCENTS, a  
 California Corporation dba OUTDORA;  
 ESMART GROUP, PTY LIMITED,  
 previously sued as DOE 21; ONE CLICK  
 SHOPS, a California Corporation dba  
 OUTDORA, previously sued as DOE 1;  
 JENSEN METAL PRODUCTS, INC.,  
 previously sued as DOE 26; REAL  
 FLAME COMPANY, Inc., previously  
 sued as DOE 27; CHEMISPHERE  
 CORPORATION, previously sued as DOE  
 11; C.L. SMITH COMPANY, previously  
 sued as DOE 12; and DOES 1 to 50,  
 inclusive,

Defendants.

Case No. SCV-256907

**PLAINTIFFS' SECOND AMENDED  
 COMPLAINT**

- 1) PRODUCT LIABILITY DESIGN  
 DEFECT**
- 2) PRODUCT LIABILITY  
 MANUFACTURING DEFECT**
- 3) NEGLIGENCE**
- 4) NEGLIGENT INFLICTION OF  
 EMOTIONAL DISTRESS**
- 5) PIERCING THE CORPORATE VEIL;  
 ALTER EGO**
- 6) PRODUCT DEFECT**

Judge: CHOUTEAU  
 Dept: 18

Plaintiffs MARGRETT LEWIS, individually, and as Guardian Ad Litem for  
 NICOLETTE LEWIS and ALEXIS LEWIS; and JEFFREY LEWIS complain of Defendants,  
 and each of them, as follows:

THE PARTIES

1. Plaintiffs are and at all times relevant herein have been residents of Sonoma, California.

2. Defendants Outdoor Architectural Accents, a California Corporation, doing business as Outdora ("Outdora"), and Does 1 through 10 are the retail sellers of E-NRG (a bioethanol fuel) and are located at 128 West Napa Street, Sonoma, California.

3. Defendant Ecosmart, Inc. ("Ecosmart") is a California corporation wholly owned, operated, managed and controlled by Esmart Group, Pty, Ltd ("Esmart"), also known as The Fire Company Pty, Ltd ("The Fire Company"), and Does 11 through 20, are doing business throughout California bottling, packaging, selling and distributing a bioethanol fuel for both indoor and outdoor use under the name E-NRG ("ethanol product").

4. Defendants The Fire Company, and Does 21 through 25, are Australian business entities that are in the business of designing, manufacturing, selling and distributing indoor and outdoor heating products and flammable fluids made out of denatured alcohol, including a bioethanol fuel known as E-NRG, to California residents, and otherwise doing business in California. E-NRG is intended to be used in indoor and outdoor applications, including stoves, heaters and architectural accents that require the use of E-NRG.

5. Upon filing this Complaint Plaintiffs were ignorant of the true names of Defendants and therefore designated Defendants as Does. Plaintiffs have identified the true name of a defendant to be: Defendant One Click Shops, a California Corporation, doing business as Outdora, as Doe 1. One Click Shops is a retail seller of E-NRG located at 128 West Napa Street, Sonoma, California.

6. Upon filing this Complaint Plaintiffs were ignorant of the true names of Defendants and therefore designated Defendants as Does. Plaintiffs have identified the true names of defendants to be: Jensen Metal Products, Inc., as Doe 26 and Real Flame Company, Inc., as Doe 27, the designers, manufacturers and distributors of the product known as a Real Flame, Model #530 Hampton Firebowl (the "fire pit product") which was defective in design

///



1 and manufacture and contributed to the catastrophic burn injuries suffered by plaintiff  
2 Nicolette Lewis.

3 7. Defendant Jensen Metal Products, Inc. and Defendant Real Flame Company,  
4 Inc. are Wisconsin corporations. Defendants Jensen Metal Products, Inc. and Real Flame  
5 Company, Inc.'s principal place of business is 7800 Northwestern Avenue, Racine, WI 53406.  
6 Defendants Jensen Metal Products, Inc., and Real Flame Company, Inc., designed,  
7 manufactured, sold and distributed a fire pit product intended for outdoor use with bioethanol  
8 fuel under the trade name of Real Flame called a Model #530 Hampton Firebowl which was  
9 involved in the catastrophic burn injuries suffered by plaintiff Nicolette Lewis. Defendants  
10 Jensen Metal Products, Inc. and Real Flame Company, Inc. are actively doing business  
11 throughout California by advertising on the internet and using the internet to sell products to  
12 California residents.

13 8. Upon the filing of this Complaint, Plaintiffs were ignorant of the true name of a  
14 Defendant, and therefore designated defendant in the Complaint by the fictitious name of Doe.  
15 Plaintiffs have identified the true name of a defendant to be: Defendant Esmart Group, Pty,  
16 Ltd, previously sued as Doe 21, an Australian business doing business in the United States.  
17 Esmart is the owner of all of the United States patents, including the patent for the defective  
18 product at issue, E-NRG, bioethanol fuel. As of 2007, The Fire Company is the operating  
19 company for Esmart (SEE EXHIBIT A, para. 12). As of 2007, Esmart is the only parent  
20 company of The Fire Company (SEE EXHIBIT B). Esmart is also the new name for The Fire  
21 Company, which changed its name with the Australian Securities & Investment Commission  
22 in 2002. However, Esmart kept the same address previously used for The Fire Company.

23 9. Upon the filing of this Complaint, Plaintiffs were ignorant of the true name of a  
24 Defendant, and therefore designated defendant in the Complaint by the fictitious name of Doe.  
25 Plaintiffs have identified the true name of defendants to be: Defendant Chemisphere  
26 Corporation, previously sued as Doe 11, a Missouri corporation doing business in California,  
27 and Defendant C.L. Smith Company, previously sued as Doe 12, a Missouri corporation doing  
28 business in California. Plaintiffs are informed and believe that Defendants Chemisphere,

1 Corporation, and C.L. Smith Company were key participants in the bottling, packaging,  
2 labeling and shipping of E-NRG to consumers located in California and are legally liable for  
3 product defects in the design and manufacture of E-NRG as key participants in the chain of  
4 distribution of E-NRG in bottles that were not equipped with flame arrestors.

5 10. Plaintiffs do not currently know the names of Does 2 through 10, 13, 20, 22  
6 through 25 and 28, and therefore sue said Defendants by said fictitious names. Plaintiffs  
7 allege that each of these Defendants is in some way liable and at fault for the events and  
8 happenings referred to herein, and each is responsible for the damages incurred by Plaintiffs.  
9 Plaintiffs will amend this Complaint to allege each Defendant's true name and capacity when  
10 ascertained.

11 11. Plaintiffs are informed and believe and thereupon allege that Defendants and  
12 Doe Defendants at all times mentioned herein, were the agents, servants, employees, joint  
13 venturers, co-conspirators, franchises and alter egos of the remaining Defendants, and each of  
14 them, and at all times relevant were acting within the course and scope of such agency,  
15 employment, partnership, joint venture or franchise.

#### 16 GENERAL ALLEGATIONS

17 12. In or about April 8, 2014, Plaintiff Margrett Lewis purchased bottles of E-NRG  
18 from Defendant Outdora for use in the fire pit product, at the family home in Sonoma,  
19 California. Prior to June 8, 2014, the Lewis family had used the outdoor fire pit product for  
20 many years without incident.

21 13. On June 8, 2014, Plaintiffs Nicolette Lewis and Alexis Lewis and two friends  
22 were using the outdoor fire pit product to cook s'mores when they thought the fire pit reservoir  
23 was out of fuel and needed to be refilled. Plaintiff Alexis Lewis was pouring a gallon bottle of  
24 E-NRG, denatured alcohol, which Defendants, and each of them, sold and distributed to  
25 Plaintiff Margrett Lewis as set forth above, into the reservoir of the fire pit product when a fire  
26 ball of denatured alcohol exploded out of the bottle covering Plaintiff Nicolette Lewis with  
27 flaming alcohol, causing third degree burns to over 26% of her body, including severe burns to  
28 her face, neck, chest, torso, upper arms, elbows and hands, legs, feet and toes (hereinafter



1 referred to as the "Incident".) As a consequence of the severe burns to her body, Plaintiff  
2 Nicolette Lewis has had to undergo skin harvesting from undamaged skin to graft skin over the  
3 damaged skin in her neck, chest and toe areas, and faces multiple skin grafting procedures in  
4 the future to reconstruct areas severely damaged by fire.

5 14. Plaintiff Alexis Lewis watched in horror as her twin sister was consumed in  
6 flames. She shouted for her mother. Plaintiff Margrett Lewis came running out of the house  
7 and tried to put out the flames which were engulfing her daughter. In the process, Plaintiff  
8 Margrett Lewis suffered burns to her hands and arms. Plaintiff Jeffrey Lewis followed  
9 Plaintiff Margrett Lewis out of the house with a bath towel and was eventually able to smother  
10 the flames consuming his daughter. In the process of smothering the flames Plaintiff Jeffrey  
11 Lewis suffered burns to his leg and the top of his foot.

12 15. The bottle of E-NRG that Plaintiff Alexis Lewis used to fill the fire pit  
13 product's reservoir was manufactured, bottled, sold and distributed without a flame arrestor.  
14 The flame arrestor is an inexpensive mesh designed to fit in the neck of the bottle to prevent  
15 vapor, once ignited, from traveling back up into the bottle and causing an explosive discharge  
16 like the fireball that torched Plaintiff Nicolette Lewis. Defendants, and each of them, were  
17 aware of the need for flame arrestors in their bottles of denatured alcohol for several years  
18 prior to the subject accident. For economic reasons Defendants, and each of them, did not  
19 manufacture, distribute or sell their bottles with flame arrestors nor did they attempt to recall  
20 bottles without flame arrestors which had been sold or distributed into the chain of commerce  
21 prior to the date of sale of E-NRG to plaintiff Margrett Lewis.

22 16. After the date of manufacture and/or bottling of the subject bottle of E-NRG,  
23 Defendants, and each of them, recognizing the extreme hazards to consumers who used their  
24 product in a reasonably foreseeable manner, redesigned the bottle and caps to allow for a flame  
25 arrestor to be placed in the neck of the bottle during manufacture, and placed a warning on the  
26 label of the bottle warning consumers of the hazard of removing the flame arrestor.

27 17. Defendants, and each of them, were made aware that other consumers of E-  
28 NRG had been consumed by fire in the same way that Plaintiff Nicolette Lewis was injured.



1 having defended several lawsuits where fire from alcohol vapors ignited bottles of their  
 2 product causing severe burns. Defendants were also aware of the dangerous and highly  
 3 flammable nature of their product and knew that other manufacturers in their industry had the  
 4 same problems with bottles of denatured alcohol sold without flame arrestors prior to the  
 5 incident giving rise to this action. Plaintiff Nicolette Lewis suffered severe emotional and  
 6 physical injuries and her twin sister, Plaintiff Alexis Lewis, has suffered severe emotional  
 7 trauma which could have been avoided had defendants, and each of them, acted reasonably to  
 8 modify their product to include flame arrestors in the years preceding the injury to Plaintiff  
 9 Nicolette Lewis.

#### 10 FIRST CAUSE OF ACTION

#### 11 (Product Liability Design Defect- Against Ecosmart, The Fire Company, Esmart, 12 Outdora, Chemisphere and C.L. Smith)

13 18. Plaintiffs incorporate by reference each of the allegations set forth in  
 14 paragraphs 1 through 17 above.

15 19. On or about June 8, 2014, Plaintiff Nicolette Lewis and Plaintiff Alexis Lewis  
 16 were using the fire pit product in a reasonably foreseeable manner when a bottle of E-NRG  
 17 bioethanol fuel erupted in flames, spewing burning ethanol on Plaintiff Nicolette Lewis  
 18 causing severe third degree burns over 26% of her body and causing permanent disfiguring  
 19 injuries to her face, neck, chest, torso, upper arms, elbows and hands, legs, feet and toes.

20 20. At the time of the Incident, Plaintiff Nicolette Lewis and Plaintiff Alexis Lewis  
 21 were using the bottle of E-NRG as intended, to fill the reservoir of the fire pit product, and in a  
 22 manner Defendants could and should reasonably have expected.

23 21. The bottles of E-NRG purchased by Plaintiff Margrett Lewis did not have  
 24 flame arrestors and there was no modification, change or abuse of the bottle prior to the  
 25 Incident.

26 22. The Incident and the burn injuries to Plaintiff Nicolette Lewis, Plaintiff  
 27 Margrett Lewis and Plaintiff Jeffrey Lewis were due to defects in the bottle as a result of a

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1 design that did not include a flame arrestor. A flame arrestor would have prevented the  
2 Incident from occurring.

3 23. As a further legal cause of the defect in the bottle design which led to the  
4 Incident, Plaintiff Nicolette Lewis suffered permanent and disfiguring injuries which include  
5 third degree burns to her face, neck, chest, torso, upper arms, elbows and hands, legs, feet and  
6 toes.

7 24. As a further proximate and legal cause of the defect in the bottle of E-NRG  
8 involved in the Incident, Plaintiff Nicolette Lewis and her parents were required to incur  
9 expenses for medical care and treatment for her physical and emotional injuries, and will incur  
10 in the future medical care to reconstruct the burn sites and the donor sites which have  
11 hypertrophic scarring with keloid components in some areas. Plaintiffs pray leave to amend  
12 this Complaint when the full extent of Plaintiff Nicolette Lewis' medical treatment and billing  
13 are finally determined.

14 25. Plaintiff Nicolette Lewis and her parents have suffered special damages  
15 (economic) in excess of the jurisdictional minimum of this Court and have incurred general  
16 damages (non-economic) in excess of the jurisdictional minimum of this Court.

17 26. Defendants, and each of them, acted with fraud, oppression and malice and with  
18 conscious disregard for the rights and safety of Plaintiffs by marketing and selling bottles of E-  
19 NRG biofuel without flame arrestors when they knew that consumers throughout the United  
20 States were suffering burns due to the ignition of vapors from their bottles manufactured  
21 without flame arrestors. Defendants were aware of multiple incidents where bottles of E-NRG  
22 exploded in the same way as in the Incident and were aware that some of their competitors  
23 were having the same problem yet continued to manufacture, sell and distribute bottles without  
24 flame arrestors.

25 Wherefore, Plaintiff Nicolette Lewis, Plaintiff Margrett Lewis and Plaintiff Jeffrey  
26 Lewis pray for judgment against Defendants, and each of them, as hereinafter set forth.

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SECOND CAUSE OF ACTION

(Product Liability Manufacturing Defect- Against Ecosmart, The Fire Company,  
Esmart, Outdora, Chemisphere, and C.L. Smith)

27. Plaintiffs incorporate by reference each of the allegations set forth in paragraphs 1 through 26 above.

28. At the time of the Incident, the bottle of E-NRG Plaintiffs were using was defective in manufacture in that it was manufactured and sold without a flame arrestor. The lack of a flame arrestor is not something that an ordinary consumer using the product in a reasonably foreseeable manner would notice and would not appreciate the risk of harm of using the bottle. The lack of a flame arrestor is not something that would likely be detected by consumers.

29. At all times relevant hereto, Plaintiffs were using the bottle of E-NRG in filling the reservoir of the fire pit product in a reasonably foreseeable manner and as reasonably expected by Defendants, and each of them.

30. Due to the manufacturing defect of the subject bottle of E-NRG, the bottle expelled a fireball of burning alcohol on Plaintiff Nicolette Lewis causing severe and permanent physical and emotional injuries as set forth above, making Defendants, and each of them, strictly liable for Plaintiff Nicolette Lewis, Plaintiff Margrett Lewis and Plaintiff Jeffrey Lewis' injuries.

31. Due to the manufacturing defect in the subject bottle of E-NRG, Plaintiffs have incurred and will continue to incur medical expense to treat their physical and emotional injuries. The exact amount of Plaintiffs' medical expenses is unknown and Plaintiffs will seek to amend this Complaint when the full extent of medical costs has been ascertained.

Wherefore, Plaintiff Nicolette, Plaintiff Margrett Lewis and Plaintiff Jeffrey Lewis pray for judgment against Defendants, and each of them, as hereinafter set forth.

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THIRD CAUSE OF ACTION

(Negligence- Against Ecosmart, The Fire Company, Esmart, Outdora,  
Chemisphere, and C.L. Smith)

32. Plaintiffs incorporate by reference each of the allegations set forth in paragraphs 1 through 31 above.

33. At all times relevant hereto, Defendants, and each of them, knew or should have known with the exercise of reasonable care that manufacturing, distributing or selling denatured alcohol in a plastic bottle without a flame arrestor was likely to cause injury to consumers using their products.

34. At all times relevant to this action, Defendants, and each of them, were negligent in the design, manufacture, testing, distribution and sale of E-NRG, denatured alcohol, in bottles equipped without flame arrestors, which made these bottles unreasonably dangerous when used by consumers in a reasonably foreseeable manner.

35. At no time did Defendants, and each of them, advise or make it known to consumers of their product that their product was not equipped with flame arrestors and that vapor from their bottles could cause the bottles to explode into flames.

36. Due to the negligence of Defendants, and each of them, Plaintiff Nicolette Lewis suffered devastating burn injuries to over 26% of her body resulting in permanent disfigurement. Plaintiff Margrett Lewis suffered burns to her arms try to put out the flames consuming her daughter. Plaintiff Jeffrey Lewis suffered burns to his leg and the top of his foot extinguishing the flames on his daughter.

37. Due to the negligence of Defendants, and each of them, Plaintiff Nicolette Lewis and her parents incurred medical expenses to treat her severe burns and will incur future medical expenses to reconstruct the areas burned and the areas where skin grafts were taken, the exact amount is unknown at this time and Plaintiffs will pray for leave to amend the Complaint when the full medical specials are determined.

Wherefore, Plaintiff Nicolette Lewis, Plaintiff Margrett Lewis and Plaintiff Jeffrey Lewis pray for judgment against Defendants, and each of them, as hereinafter set forth.

**FOURTH CAUSE OF ACTION**

**(Negligent Infliction of Emotional Distress- Against Ecosmart, Esmart, The Fire Company, Outdora, Chemisphere, and C.L. Smith)**

38. Plaintiffs incorporate by reference each of the allegations set forth in paragraphs 1 through 37 above.

39. At all times relevant hereto Defendants, and each of them, were negligent in the design, manufacture, distribution and sale of plastic containers filled with denatured alcohol and sold under the name of E-NRG, which proximately and legally caused severe burn injuries to Plaintiff Nicolette Lewis in the Incident described above.

40. Plaintiff Alexis Lewis, the twin sister of Plaintiff Nicolette Lewis, saw her sister covered in flaming alcohol as it exploded from the bottle of E-NRG, heard her scream and cry and saw her flesh being consumed. Plaintiff Margrett Lewis and Plaintiff Jeffrey Lewis came to the rescue of Plaintiff Nicolette Lewis and saw her flesh burning, smelled her flesh burning, heard her screams of agony and helped to put out the flames. They saw their beautiful daughter being consumed and disfigured by flames.

41. Plaintiffs suffered extreme emotional distress due to the negligence of Defendants, and each of them, and have suffered nightmares, anxiety and depression resulting in problems sleeping and engaging in their normal activities of daily living.

42. Plaintiffs' emotional distress has been so severe that they have required medical and psychiatric treatment to deal with the emotional trauma of witnessing the Incident. The past and future medical and psychiatric treatment is unknown at this time and Plaintiffs will seek leave to amend the Complaint when the costs have finally been determined.

Wherefore Plaintiff Alexis Lewis, Plaintiff Margrett Lewis and Plaintiff Jeffrey Lewis pray for judgment against Defendants, and each of them, as hereinafter set forth.

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FIFTH CAUSE OF ACTION

(Piercing the Corporate Veil: Alter Ego - Against Esmart, The Fire Company, and  
Ecosmart)

43. Plaintiffs incorporate by reference each of the allegations set forth in the paragraphs 1 through 42 above.

44. The Fire Company (also known as Esmart Group, Pty, Ltd) acted as the alter ego of Ecosmart, Inc. Both The Fire Company and Ecosmart, Inc. owed a duty to Plaintiffs to protect them from their faulty product, E-NRG bioethanol fuel.

45. There exists, and at all times herein mentioned there existed, a unity of interest and ownership between The Fire Company and Ecosmart, such that any individuality and separateness between them have ceased, and The Fire Company is the alter ego of Ecosmart.

46. Ecosmart is wholly owned, operated, managed and controlled by Esmart, aka The Fire Company. Ecosmart and The Fire Company are participating in a common venture with respect to manufacture and distribution of bioethanol fuel. They tend to benefit jointly from transactions entered into by one of them.

47. Ecosmart, Inc., is the main brand of The Fire Company. Both The Fire Company and Ecosmart's websites are cross linked and they share the same Head Office.

48. Ecosmart's Australian patents are registered to The Fire Company. Ecosmart's United States patents are registered at the same mailing address as is used by The Fire Company.

49. Ecosmart and The Fire Company share common directors and officers. Ecosmart's Statement of Information provided to the California Secretary of State lists Stephane Thomas as a chief executive of both businesses: he is the Secretary, Director and Chief Financial Officer of Ecosmart (EXHIBIT C) and the Chief Executive Operator for The Fire Company (EXHIBIT D).

50. Ecosmart, Inc. and the Fire Company have pooled their assets. Ecosmart has recently claimed that it has no insurance and no assets. Ecosmart has failed to adequately capitalize itself.



51. Ecosmart, Inc. is a mere instrumentality of The Fire Company, set up for the improper purpose of avoiding liability for its defective products by manipulating assets and liabilities so as to concentrate the assets in one and the liabilities in another. Thus, absent application of the alter ego doctrine, Plaintiffs will be left with no way to satisfy a valid judgment, producing an inequitable result.

52. Ecosmart and The Fire Company have a unity of ownership and interest, and acted in bad faith when they manufactured and distributed a defective product. Adherence to the fiction that Ecosmart and The Fire Company are different entities would unjustly benefit Defendants, bring about unequitable results, promote injustice, and/or sanction a fraud.

53. Plaintiffs are informed, believe and thereupon allege that Defendants acted fraudulently, maliciously, and oppressively with a conscious disregard of the probable detrimental and economic consequences to Plaintiffs and to the direct benefit of Defendants, knowing that Defendants' conduct was substantially certain to vex, annoy, and injure Plaintiffs, by (1) releasing into the marketplace products which they knew to be defectively designed and manufactured and foreseeably likely to cause serious injuries; (2) failing to recall their defective products even after they began releasing newer, safer products; (3) manipulating their corporate entities so as to shield themselves financially from valid judgments. Plaintiffs are therefore entitled to punitive damages under California Civil Code section 3294, in an amount sufficient to punish or to make an example of Defendants.

Wherefore, Plaintiff s pray for judgment against Defendants, and each of them, as hereinafter set forth.

#### SIXTH CAUSE OF ACTION

##### **(Product Defect: Jensen Metal Products, Inc., Real Flame Company, Inc.)**

54. Plaintiffs incorporate by reference each of the allegations set forth in the paragraphs 1 through 17 above.

55. Plaintiff Margrett Lewis was the original purchaser of the fire pit product, sold under the name Real Flame, over the internet for use as an outdoor fire pit. The fire pit product was intended to burn bioethanol fuel. Bioethanol fuel does not give off smoke or odor

1 and can be used both indoors and outdoors. Bioethanol flames are not always visible,  
2 especially as the fuel in the reservoir is depleted.

3 56. The subject fire pit product has decorative rock which both surrounds the fuel  
4 reservoir and is spread on top of a sliding plate which is intended to be used to open and close  
5 the fuel reservoir for the fire pit. The fire pit product is defective in design because the rocks,  
6 in combination with the height of the reservoir, make it difficult to move and close the sliding  
7 plate which shuts off air and extinguishes any fire in the reservoir. The hand held piece called  
8 a "scraper tool" is inadequate to move the "damper" to ensure the fire is completely out before  
9 new fuel is added to the reservoir.

10 57. Due to the design defects in the fire pit product, and the damping mechanism,  
11 there was a small residual flame in the reservoir which was not readily observable to Plaintiffs,  
12 who thought the fire was out and that it was safe to refuel, which was the ignition source for  
13 the vapor fire and explosion which caused catastrophic burn injuries to Plaintiff Nicolette  
14 Lewis.

15 58. The subject fire product was also defective in design in that there were no  
16 warnings on the pit or in the packaging material that residual ethanol flames might be present,  
17 but not visible, and that the reservoir should be completely closed before refueling to ensure all  
18 flames are out before refueling and failed to warn that vapor fires could occur if ethanol fuel  
19 was poured from a bottle which was not equipped with a flame arrestor.

20 59. The Incident and burn injuries to Plaintiffs were due to the defect in design of  
21 the fire pit product as set forth above and due to the failure to warn that refueling of the fire pit  
22 with bottles which were not equipped with flame arrestors could lead to an explosive vapor  
23 fire, and the risk of severe burn injuries if the reservoir was not completely closed each time  
24 before adding fuel to ensure all flames were extinguished.

25 60. As a further legal cause of the fire pit product design and failure to warn which  
26 led to the Incident, Plaintiff Nicolette Lewis suffered permanent and disfiguring injuries which  
27 include third degree burns to her face, neck, chest, torso, upper arms, elbows, hands, legs, face  
28 and toes.



61. As a further proximate and legal cause of the defect in the fire pit product as set forth above, Plaintiffs were required to incur expenses for the medical care and treatment of the mental and physical injuries suffered by Nicolette Lewis, Alexis Lewis and Margrett Lewis. Future care of Nicolette Lewis will include reconstruction of burn and donor sites throughout Nicolette's body which have hypertrophic scarring with keloid components. Nicolette Lewis, Alexis Lewis and Margrett Lewis will need continued psychological care for severe emotional distress. Plaintiffs pray leave to amend this Complaint when the full extent of Plaintiffs Nicolette Lewis, Alexis Lewis and Margrett Lewis' medical and psychiatric medical treatment and billing are finally determined.

62. Plaintiffs, and each of them, have suffered special (economic) and general (non-economic) damages in excess of the jurisdictional minimum of this Court.

Wherefore, Plaintiff Nicolette Lewis, Plaintiff Alexis Lewis, Plaintiff Margrett Lewis and Plaintiff Jeffrey Lewis pray for judgment against Defendants, and each of them, as hereinafter set forth.

#### **SEVENTH CAUSE OF ACTION**

**(Negligence: Jensen Metal Products, Inc., Real Flame Company, Inc.)**

63. Plaintiffs incorporate by reference each of the allegations set forth in paragraphs 1 through 17 and 54 through 62 above.

64. Defendants, and each of them, were at all times mentioned herein in the business of selling fire pits for home use which require the use of pourable ethanol based products to create a smokeless flame which allows their products to be used both indoors and outdoors. Defendants were aware that ethanol is highly flammable and when poured, vapor from the ethanol is released and that the vapor can be ignited and, if ignited, can travel back into the container from which it has been poured igniting the contents of the container causing a sudden and unexpected explosive discharge of flaming ethanol, creating a deadly risk of injury to anyone close to the discharge. The hazard occurs when consumers attempt to pour ethanol into the reservoir of the fire pit because of a combination of the characteristics of ethanol, it is odorless, colorless and smokeless barely visible when the reservoir of ethanol is



1 nearly depleted, and the design of the reservoir. The configuration of the fire pit product's  
 2 reservoir, with the sliding plate which sits on top of the reservoir, conceals the flame making it  
 3 difficult to see there is flame in the reservoir, thus, creating a risk of explosive discharge of  
 4 ethanol should a consumer attempt to pour ethanol into the reservoir.

5 65. Defendants, and each of them, knew or should have known that the  
 6 configuration of their product, coupled with the explosive nature of ethanol when poured from  
 7 a container without a flame arrestor, created an unreasonably dangerous condition likely to  
 8 cause serious injury to consumers of their fire pit product. Defendants, and each of them, were  
 9 negligent in the design, manufacturing, marketing, sale and distribution of their product and as  
 10 a consequence of their negligence Plaintiff Nicolette Lewis suffered devastating burn injuries  
 11 to over 26% of her body resulting in permanent disfigurement. Plaintiff Margrett Lewis and  
 12 Plaintiff Jeffrey Lewis suffered burns trying to extinguish flames consuming their daughter.

13 66. Due to the negligence of Defendants, and each of them, Plaintiff Nicolette  
 14 Lewis and her parents incurred medical expenses to treat her severe burns and will incur future  
 15 medical expenses to reconstruct the areas burned and the areas where skin grafts were taken,  
 16 the exact amount is unknown at this time and Plaintiffs will pray for leave to amend the  
 17 Complaint when the full medical specials are determined.

18 Wherefore, Plaintiff Nicolette Lewis and Plaintiff Margrett Lewis and Plaintiff Jeffrey  
 19 Lewis pray for judgment against Defendants, and each of them, as hereinafter set forth.

#### 20 EIGHTH CAUSE OF ACTION

21 (Negligent Infliction of Emotional Distress against Jensen Metal Products, Inc.,  
 22 Real Flame Company, Inc.)

23 67. Plaintiffs incorporate by reference each of the allegations set forth in  
 24 paragraphs 1 through 17 and 54 through 66 above.

25 68. At all times relevant hereto, Defendants, and each of them, were negligent in  
 26 the design, manufacture, marketing, sale and distribution of their product which proximately  
 27 and legally caused severe burn injuries to Plaintiff Nicolette Lewis during the Incident  
 28 described above.

69. Plaintiff Alexis Lewis, the twin sister of Plaintiff Nicolette Lewis, saw her sister covered in flaming alcohol as it exploded from the bottle of E-NRG, heard her scream and cry and saw flesh being consumed by flame. Plaintiff Margrett Lewis and Plaintiff Jeffrey Lewis came to the rescue of Nicolette Lewis and saw her flesh burning, smelled her flesh burning, and heard screams of agony as they attempted to put out the flames. They saw their beautiful daughter being consumed and disguised by burning ethanol.

70. Plaintiffs suffered extreme emotional distress due to the negligence of Defendants, and each of them, and have suffered nightmares, flashbacks, anxiety and depression resulting in problems sleeping and engaging in the normal activities of daily living.

71. Plaintiffs' emotional distress has been so severe that they have medical and psychiatric care and counseling to deal with the emotional trauma of witnessing the Incident. The past and future medical, psychiatric and psychological counseling is unknown at this time and Plaintiffs will seek leave to amend the Complaint when the costs have been fully determined.

Wherefore, Plaintiff Alexis Lewis, Plaintiff Margrett Lewis and Plaintiff Jeffrey Lewis pray for judgment against Defendants, and each of them, as hereinafter set forth.

#### PRAYER

Wherefore, Plaintiffs pray for judgment as follows:

1. An award of general damages for each Plaintiff according to proof;
2. An award of special damages for each Plaintiff according to proof;
3. An award of post-judgment interest at the legal rate;
4. An award of costs of suit;
5. An award of punitive damages in an amount to punish and deter as to Defendants Ecosmart, INC., The Fire Company, PTY, LTD, and Esmart Group, PTY Limited;

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6. All such other and further relief as the Court determines is just and proper.

PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ, LLP

DATED: January 12, 2016

By: 

WILLIAM D. ANDERSON

Attorneys for Plaintiffs

MARGRETT LEWIS, individually and as

Guardian Ad Litem for NICOLETTE

LEWIS and ALEXIS LEWIS; and

JEFFREY LEWIS

PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ LLP







EXHIBIT A

Case 2:08-cv-00672-HRH Document 1 Filed 04/07/08 Page 1 of 5

**GREENBERG TRAURIG, LLP**

ATTORNEYS AT LAW

SUITE 700

2375 EAST CAMELBACK ROAD

PHOENIX, ARIZONA 85016

(602) 445-8000

John Alan Doran, SBN 012112, DoranJ@gtlaw.com

Kimberly A. Warshawsky, SBN 022083, WarshawskyK@gtlaw.com

Laura Sixkiller, SBN 022014, SixkillerL@gtlaw.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

ESMART GROUP PTY LIMITED and THE  
FIRE COMPANY PTY LIMITED,

Plaintiffs,

v.

MIKE GROUT,

Defendant.

No.

**COMPLAINT**

**(Patent Infringement)**

**(Jury Trial Demanded)**

Plaintiffs Esmart Group Pty Limited and The Fire Company Pty Limited, by and through their attorneys, for their Complaint against Defendant Mike Grout, on information and belief, allege as follows:

**THE PARTIES**

1. Plaintiff Esmart Group Pty Limited ("ESMART") is a company existing under the laws of the country of Australia, with its principal place of business at 9/5 Vuko Place, Warriewood NSW 2102, Australia.

2. Plaintiff The Fire Company Pty Limited ("FIRE COMPANY") is a company existing under the laws of the country of Australia, with its principal place of business at 9/5 Vuko Place, Warriewood NSW 2102, Australia.

3. Upon information and belief, Defendant Mike Grout is a citizen of Arizona and resides at 4632 North 40th Street, Phoenix, Arizona 85018.



**JURISDICTION AND VENUE**

4. This action arises under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.*

5. This Court has subject matter jurisdiction over this action pursuant to the laws of the United States governing actions related to patents, 28 U.S.C. §§ 1331 and 1338(a).

6. Defendant conducts business in this district. This Court therefore has general personal jurisdiction over Defendant.

7. Defendant has committed acts of patent infringement in this district.

8. Upon information and belief, Defendant continues to commit acts of patent infringement in this district.

9. This Court also has specific personal jurisdiction over Defendant.

10. Venue in this judicial district is proper under 28 U.S.C. §§ 1391 (b), (c) and (d) and 1400(b) because Defendant resides in this judicial district, has committed acts of patent infringement in this district, and has conducted business in this district.

**FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

11. Plaintiffs are engaged in, among other things, the development, manufacture, and sale of alternative fuel fireplaces that do not require flues. Homeowners, housing developers, and restaurants are common purchasers of these products.

12. On October 30, 2007, U.S. Patent No. 7,287,979 ("the '979 Patent") was duly and legally issued by the United States Patent and Trademark Office. The '979 Patent was assigned to Plaintiff ESMART, who is the owner of all right, title, and interest in and to the '979 Patent, including the right to sue for infringement and recover damages

Case 2:08-cv-00672-HRH Document 1 Filed 04/07/08 Page 3 of 5

1 resulting therefrom. Plaintiff FIRE COMPANY is the operating company for Plaintiff  
2 ESMART.

3 13. A copy of the '979 Patent is attached hereto as Exhibit A and is made a part  
4 of this Complaint.

5 14. Plaintiffs are and have been selling, within this judicial district, products in  
6 accordance with the '979 Patent.

7 15. Upon information and belief, Defendant is and has been selling products  
8 embodying the invention claimed in the '979 Patent within the United States of America,  
9 including within this judicial district.

10 16. At all relevant times, Defendant has been and continues to be the sole  
11 member and owner of the Arizona limited liability company, Innovations M2, LLC  
12 ("INNOVATIONS"), having a principal place of business at 4632 North 40th Street,  
13 Phoenix, Arizona, 85018.

14 17. As the sole member of INNOVATIONS, Defendant has operated  
15 INNOVATIONS out of his personal residence and exercised total control over all of  
16 INNOVATIONS' activities.

#### 17 COUNT I

#### 18 Infringement of United States Patent No. 7,287,979 19 (35 U.S.C. §§ 1, et seq.)

20 18. Plaintiffs re-allege and incorporate by reference each of the allegations of  
21 Paragraphs 1 through 17 as if fully set forth herein.

22 19. At all relevant times, INNOVATIONS functioned as Defendant's alter ego  
23 as Defendant completely dominated and exercised total control over INNOVATIONS'  
24 policies and business practices.

25 20. Among the policies and business practices implemented by Defendant were  
26 INNOVATIONS' infringement of the '979 Patent.

Case 2:08-cv-00672-HRH Document 1 Filed 04/07/08 Page 4 of 5

21. The extent of Defendant's control over INNOVATIONS renders INNOVATIONS' separate corporate existence from Defendant a mere fiction.

22. Observance of this corporate fiction would effectively sanction Defendant's and INNOVATIONS' willful conduct and unjustly allow Defendant and INNOVATIONS to retain the benefits of their infringing action to the detriment of Plaintiffs.

23. Because Defendant is the alter ego of INNOVATIONS, he may be held directly, jointly and severally liable for INNOVATIONS' infringement of the '979 Patent.

24. Accordingly, INNOVATIONS' liability shield should be pierced and Defendant held directly, jointly and severally liable for INNOVATIONS' infringement of the '979 Patent.

25. Upon information and belief, all of Defendant's acts were and are intentional and willful.

26. Defendant's acts have damaged Plaintiffs and, unless enjoined, will continue to damage and cause irreparable injury to Plaintiffs.

27. Plaintiffs have no adequate remedy at law.

**RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully request judgment against Defendant as follows:

A. A Judgment that Defendant is directly and personally liable for INNOVATIONS' infringing of one or more of the claims of the '979 Patent in violation of 35 U.S.C. § 271(a);

B. A temporary, preliminary and permanent injunction enjoining Defendant, his agents, employees, licensees, and all those in privity with him, including INNOVATIONS, from infringing the '979 Patent;

C. An award of damages against Defendant sufficient to compensate Plaintiffs for the injury caused by INNOVATIONS' infringement of the '979 Patent;



Case 2:08-cv-00672-HRH Document 1 Filed 04/07/08 Page 5 of 5

1 D. An award trebling the damages pursuant to 35 U.S.C. § 284 based upon  
2 INNOVATIONS' willful infringement of the '979 Patent;

3 E. An assessment of costs, including reasonable attorneys fees pursuant to 35  
4 U.S.C. § 285, and prejudgment interest against Defendant; and

5 F. Such other and further relief as this Court may deem just and proper.

6 RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of April, 2008.

7 GREENBERG TRAURIG, LLP

8 By: /s/ Kimberly A. Warshawsky

9 John Alan Doran  
10 Kimberly A. Warshawsky  
Laura Sixkiller  
Attorneys for Plaintiffs

11 Of counsel:  
12 Angelo J. Bufalino, Esq.  
13 Michael J. Turgeon, Esq.  
14 Robert S. Rigg, Esq.  
15 Vedder Price P.C.  
222 N. LaSalle St., Suite 2600  
Chicago, Illinois 60601-1003  
16 (312) 609-7500 - Tel  
17 (312) 609-5005 - Fax  
18  
19  
20  
21  
22  
23  
24  
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26

LAW OFFICES  
GREENBERG TRAURIG  
2375 EAST CAMELBACK ROAD, SUITE 700  
PHOENIX, ARIZONA 85016  
(602) 443-8000







EXHIBIT B



Case 1:07-cv-06137 Document 11 Filed 12/07/2007 Page 1 of 3

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ESMART GROUP PTY LIMITED, and  
THE FIRE COMPANY PTY LIMITED,

Plaintiffs,

v.

INNOVATIONS M2, LLC, and  
BRAD BLAYLOCK,

Defendant.

Court File No.: 07-CV-06137

Judge Suzanne B. Conlon

Magistrate Judge Nolan

**NOTIFICATION OF AFFILIATES**  
**DISCLOSURE STATEMENT PURSUANT TO LOCAL RULE 3.2**

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure and Local Rule 3.2, Plaintiffs, Esmart Group Pty Limited ("Esmart") and The Fire Company Pty Limited ("Fire Co."), state that: (1) Esmart is an Australian private company, it has no parent company or corporation and no publicly-held company owns 10% or more of Esmart's ownership interests; and (2) Fire Co. is an Australian private company, Esmart is its only parent company and no publicly-held company owns 10% or more of Fire Co.'s ownership interests.

Respectfully submitted,

ESMART GROUP PTY LIMITED  
THE FIRE COMPANY PTY LIMITED

By: s/ Michael J. Turgeon  
One of Their Attorneys

Case 1:07-cv-06137 Document 11 Filed 12/07/2007 Page 2 of 3

Angelo J. Bufalino, Esq.  
Robert S. Rigg, Esq.  
Michael J. Turgeon, Esq.  
VEDDER, PRICE, KAUFMAN & KAMMHOLZ, P.C.  
222 North LaSalle Street, Suite 2600  
Chicago, IL 60601-1003  
Telephone: 312/609-7500  
Facsimile: 312/609-5005

Dated: December 7, 2007

Case 1:07-cv-06137 Document 11 Filed 12/07/2007 Page 3 of 3

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2007, I electronically filed the foregoing NOTIFICATION OF AFFILIATES DISCLOSURE STATEMENT PURSUANT TO LOCAL RULE 3.2 with the Clerk of the Court using the CM/ECF system, and will send notification of such filing to the following via Federal Express:

Gary Rogers, Solicitor  
Blueprint Law  
Suite 602  
Level 6  
Westfield Towers  
100 William Street  
Sydney, New South Wales 2011  
AUSTRALIA

s/ Michael J. Turgeon



EXHIBIT C

11-658078



# State of California Secretary of State

S

51

## Statement of Information

(Domestic Stock and Agricultural Cooperative Corporations)

FEES (Filing and Disclosure): \$25.00. If amendment, see instructions.  
IMPORTANT - READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

**FILED**  
In the office of the Secretary of State  
of the State of California

FEB 24 2011

## 1. CORPORATE NAME

EcoSmart, Inc.  
C3017592

This Space for Filing Use Only

## Due Date:

Complete Addresses for the Following (Do not abbreviate the name of the city. Items 2 and 3 cannot be P.O. Boxes.)

2. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE	CITY	STATE	ZIP CODE
3641 HOLDREGE AVE., SUITE B	LOS ANGELES	CA	90016
3. STREET ADDRESS OF PRINCIPAL BUSINESS IN CALIFORNIA, IF ANY	CITY	STATE	ZIP CODE
3641 HOLDREGE AVE., SUITE B	LOS ANGELES	CA	90016
4. MAILING ADDRESS OF THE CORPORATION, IF DIFFERENT THAN ITEM 2	CITY	STATE	ZIP CODE

Names and Complete Addresses of the Following Officers (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

5. CHIEF EXECUTIVE OFFICER/	ADDRESS	CITY	STATE	ZIP CODE
ALEXANDER EBURNE	3641 HOLDREGE AVE., SUITE B	LOS ANGELES	CA	90016
6. SECRETARY	ADDRESS	CITY	STATE	ZIP CODE
STEPHANE THOMAS	3641 HOLDREGE AVE., SUITE B	LOS ANGELES	CA	90016
7. CHIEF FINANCIAL OFFICER/	ADDRESS	CITY	STATE	ZIP CODE
STEPHANE THOMAS	3641 HOLDREGE AVE., SUITE B	LOS ANGELES	CA	90016

Names and Complete Addresses of All Directors, Including Directors Who are Also Officers (The corporation must have at least one director. Attach additional pages, if necessary.)

8. NAME	ADDRESS	CITY	STATE	ZIP CODE
STEPHANE THOMAS	3641 HOLDREGE AVE., SUITE B	LOS ANGELES	CA	90016
9. NAME	ADDRESS	CITY	STATE	ZIP CODE
10. NAME	ADDRESS	CITY	STATE	ZIP CODE

## 11. NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY:

Agent for Service of Process (If the agent is an individual, the agent must reside in California and Item 13 must be completed with a California street address (a P.O. Box is not acceptable). If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 13 must be left blank.)

## 12. NAME OF AGENT FOR SERVICE OF PROCESS

A and A Companies, Inc.

C 2399516

13. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL	CITY	STATE	ZIP CODE
		CA	

## Type of Business

14. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION  
Investment business

15. BY SUBMITTING THIS STATEMENT OF INFORMATION TO THE CALIFORNIA SECRETARY OF STATE, THE CORPORATION CERTIFIES THE INFORMATION CONTAINED HEREIN, INCLUDING ANY ATTACHMENTS, IS TRUE AND CORRECT.

02/21/2011  
DATE

Michael J. Minkus

TYPE/PRINT NAME OF PERSON COMPLETING FORM

Agent

TITLE

SIGNATURE


	<b>State of California</b> <b>Secretary of State</b> <b>Statement of Information</b> (Domestic Stock and Agricultural Cooperative Corporations) <b>FEES (Filing and Disclosure): \$25.00.</b> If this is an amendment, see instructions. <b>IMPORTANT - READ INSTRUCTIONS BEFORE COMPLETING THIS FORM</b>	<b>S</b>	EU97696 <b>FILED</b> In the office of the Secretary of State of the State of California  NOV-06 2013  This Space for Filing Use Only
1. CORPORATE NAME ECOSMART, INC.			
2. CALIFORNIA CORPORATE NUMBER C3017592			
No Change Statement (Not applicable if agent address of record is a P.O. Box address. See instructions.) 3. If there have been any changes to the information contained in the last Statement of Information filed with the California Secretary of State, or no statement of information has been previously filed, this form must be completed in its entirety. <input checked="" type="checkbox"/> If there has been no change in any of the information contained in the last Statement of Information filed with the California Secretary of State, check the box and proceed to Item 17.			
Complete Addresses for the Following (Do not abbreviate the name of the city. Items 4 and 5 cannot be P.O. Boxes.)			
4. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE	CITY	STATE	ZIP CODE
5. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY	CITY	STATE	ZIP CODE
6. MAILING ADDRESS OF CORPORATION, IF DIFFERENT THAN ITEM 4	CITY	STATE	ZIP CODE
Names and Complete Addresses of the Following Officers (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)			
7. CHIEF EXECUTIVE OFFICER/	ADDRESS	CITY	STATE ZIP CODE
8. SECRETARY	ADDRESS	CITY	STATE ZIP CODE
9. CHIEF FINANCIAL OFFICER/	ADDRESS	CITY	STATE ZIP CODE
Names and Complete Addresses of All Directors, Including Directors Who are Also Officers (The corporation must have at least one director. Attach additional pages, if necessary.)			
10. NAME	ADDRESS	CITY	STATE ZIP CODE
11. NAME	ADDRESS	CITY	STATE ZIP CODE
12. NAME	ADDRESS	CITY	STATE ZIP CODE
13. NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY:			
Agent for Service of Process If the agent is an individual, the agent must reside in California and Item 15 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 15 must be left blank.			
14. NAME OF AGENT FOR SERVICE OF PROCESS			
15. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL		CITY	STATE ZIP CODE
Type of Business			
16. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION			
17. BY SUBMITTING THIS STATEMENT OF INFORMATION TO THE CALIFORNIA SECRETARY OF STATE, THE CORPORATION CERTIFIES THE INFORMATION CONTAINED HEREIN, INCLUDING ANY ATTACHMENTS, IS TRUE AND CORRECT.			
11/06/2013	GRACE REGINA HERRERA	OFFICE MANAGER	
DATE	TYPE/PRINT NAME OF PERSON COMPLETING FORM	TITLE	SIGNATURE
SI-200 (REV 07/2013)			APPROVED BY SECRETARY OF STATE



EXHIBIT D

## Current &amp; Historical Company Extract

ESMART GROUP PTY LIMITED  
ACN 099 603 568

## Organisation Details

Document Number

## Current Organisation Details

Name: ESMART GROUP PTY LIMITED 022554280  
ACN: 099 603 568  
ABN: 14099603568  
Registered in: New South Wales  
Registration date: 15/02/2002  
Next review date: 15/02/2016  
Name start date: 30/11/2005  
Status: Registered  
Company type: Australian Proprietary Company  
Class: Limited By Shares  
Subclass: Proprietary Company

## Previous Organisation Details from 15/02/2002 to 29/11/2005

Name: THE FIRE COMPANY PTY LTD 017783466  
Name start: 15/02/2002  
Status: Registered  
Company type: Australian Proprietary Company  
Class: Limited By Shares  
Subclass: Proprietary Company

## Address Details

Document Number

## Current

Registered address: THE FIRE COMPANY PTY LIMITED, 'Showroom 3 & 4', 40-42 O'Riordan Street, ALEXANDRIA NSW 2015 1F0386224  
Start date: 20/03/2012  
Principal Place Of Business address: 'Showroom 3 & 4', 40-42 O'Riordan Street, ALEXANDRIA NSW 2015 1F0386224  
Start date: 21/02/2012

## Historical

Registered address: THE FIRE COMPANY PTY LIMITED, 10 Apollo Street, WARRIEWOOD NSW 2102 025668834  
Start date: 31/07/2009  
Cease date: 19/03/2012  
Registered address: THE FIRE COMPANY PTY LIMITED, 10 Apollo Street, WARRIEWOOD NSW 2102 024905714  
Start date: 30/07/2008  
Cease date: 30/07/2009  
Registered address: Unit 9, 5 Vuko Place, WARRIEWOOD NSW 2102 1F0117218  
Start date: 03/07/2006  
Cease date: 29/07/2008  
Registered address: Unit 10, 14 Polo Avenue, MONA VALE NSW 2103 020416661  
Start date: 28/06/2004  
Cease date: 02/07/2006

## Current &amp; Historical Company Extract

ESMART GROUP PTY LIMITED

ACN 099 603 568

Registered address: THE ALLEN HALL PARTNERSHIP, Level 3, 685 Pittwater Road, DEE WHY NSW 2099 017783466

Start date: 15/02/2002

Cease date: 27/06/2004

Principal Place Of Business address: 10 Apollo Street, WARRIEWOOD NSW 2102 024905714

Start date: 04/07/2008

Cease date: 20/02/2012

Principal Place Of Business address: Unit 9, 5 Vuko Place, WARRIEWOOD NSW 2102 1F0117218

Start date: 01/07/2006

Cease date: 03/07/2008

Principal Place Of Business address: Unit 10, 14 Polo Avenue, MONA VALE NSW 2103 020416661

Start date: 18/06/2004

Cease date: 30/06/2006

Principal Place Of Business address: 25 Kananook Avenue, BAYVIEW NSW 2104 0E7736169

Start date: 23/09/2002

Cease date: 17/06/2004

Principal Place Of Business address: Unit 8, 7 Darley Street, MONA VALE NSW 2103 017783466

Start date: 15/02/2002

Cease date: 22/09/2002

## Contact Address

Section 146A of the Corporations Act 2001 states 'A contact address is the address to which communications and notices are sent from ASIC to the company'.

Address: PO BOX 6340, FRENCHS FOREST NSW 2086

Start date: 28/06/2003

## Officeholders and Other Roles

Document Number

## Director

Name: TAMIR HAIKIN 026443554

Address: 19 Haig Street, MAROUBRA NSW 2035

Born: 25/10/1976, PETAH TIKVA, ISRAEL

Appointment date: 23/03/2010

Name: STEPHANE WILFRID THOMAS 1F0386224

Address: Unit 3, 2-10 Le Vesinet Drive, HUNTERS HILL NSW 2110

Born: 07/07/1973, LOBREVILLE, GABON

Appointment date: 18/06/2004

## Previous Director

Name: UWE BERNHARD BACKES 024313336

Address: 20 Iluka Avenue, ELANORA HEIGHTS NSW 2101

Born: 21/11/1962, DORTMUND, GERMANY

Appointment date: 15/02/2002

Cease date: 20/12/2010

## Previous Secretary

Name: UWE BERNHARD BACKES 024313336



1 **PROOF OF SERVICE**

2 I declare that:

3 I am and was at the time of service of the papers herein, over the age of eighteen (18)  
4 years and am not a party to the action. I am employed in the County of Sonoma, California,  
and my business address is 438 1st Street, 4th Floor, Santa Rosa, California 95401.

5 On January 14, 2016, I served the following document, described as set forth below on  
6 the interested parties in this action by placing true copies thereof enclosed in sealed envelopes,  
at Sonoma, addressed as follows:

7 **PLAINTIFFS' SECOND AMENDED COMPLAINT**

8 Sigrid Irias  
9 Law Offices of Santana, Tcheng, Vierra &  
Symonds  
10 71 Stevenson Street, Ste. 700  
San Francisco, CA 94105

Attorney for defendant  
Outdoor Architectural Accents; a  
California Cooperation dba Outdora

11 John Samberg  
12 Simon Aron  
13 Wolf, Rifkin, Shapiro, Schulman & Rabkin,  
LLP  
14 5594-B Longley Lane  
Reno, NV 89511

Attorney for defendant  
Ecosmart, Inc

- 15 ☒ **BY FIRST-CLASS MAIL:** I caused such envelopes to be deposited in the United  
16 States mail, at Santa Rosa, California, with postage thereon fully prepaid,  
individually, addressed to the parties as indicated. I am readily familiar with the  
17 firm's practice of collection and processing correspondence in mailing. It is deposited  
with the United States postal service each day and that practice was followed in the  
18 ordinary course of business for the service herein attested to.
- 19 ☐ **BY FACSIMILE TRANSMISSION:** By use of facsimile machine number  
(707)545-8288, I served a copy of the within document(s) on the above interested  
20 parties at the facsimile numbers listed above. The transmission was reported as  
complete and without error. The transmission report was properly issued by the  
transmitting facsimile machine.
- 21 ☐ **BY ELECTRONIC FILING SERVICE:** My electronic business address is  
22 tuscano@perrylaw.net and I caused such document(s) to be electronically served for  
the above-entitled case to those parties on the Service List below. The file  
23 transmission was reported complete and a copy will be maintained with the original  
document(s) in our office.

1  
2 I declare under penalty of perjury under the laws of the State of California that the  
3 foregoing is true and correct.

4 Executed on January 14, 2016, at Santa Rosa, California.

5   
6 Stephanie Caron

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PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ LLP

Case No. SCV261819  
02-13-2018  
Letter





## Superior Court of California County of Sonoma

Arlene D. Junior  
Court Executive Officer

ACCESS, SERVICE, JUSTICE

To: Leslie R. Perry, Esq.  
Attorney Box #59

Case Number: SCV-261819

Case Name: Lewis vs Liberty Mutual Insurance  
Company

Your Proof of Service of Process is being returned because:

- ☐ The Defendant listed does not match our records
- ☐ Service cannot be accomplished until after the document has been filed.
- ☐ One proof of service must be submitted for each defendant
- ☐ The date, time and place of service must be completed
- ☐ You must have a court order allowing service by posting or publication
- ☐ Service must be accomplished by someone over the age of 18 and not a party to the action
- ☐ Information regarding the server must be completed
- ☐ The declaration must be dated
- ☐ This must be submitted on the adopted Judicial Council Form (POS-010)
- ☒ Other: A Proof of Service is on file for Liberty International Underwriters as of 2/2/2018

If you have any questions, please contact the Civil Clerk's Office at (707) 521-6610 from 8:00am to noon on regular business days.

Date: 2/13/2018

Arlene D. Junior, Court Executive Officer  
**MELYNDA BONAGOFSKI**

By: \_\_\_\_\_  
Melynda Bonagofski, Deputy Clerk

SCV - 261819  
RECLK  
Clerk Return Letter  
48808



Hall of Justice  
600 Administration Drive  
Santa Rosa, CA 95403

Empire Annex Courthouse  
3035 Cleveland Avenue  
Santa Rosa, CA 95403

Civil and Family Law Courthouse  
3055 Cleveland Avenue  
Santa Rosa, CA 95403

Juvenile Justice Center  
7425 Rancho Los Guilicos Road  
Santa Rosa, CA 95409

Case No. SCV261819  
02-14-2018

Discovery served on Liberty  
International Underwriters



## Notice of Service of Process

Transmittal Number: 17772837  
Date Processed: 02/15/2018

**Primary Contact:** Bruce Buttaro  
Liberty Mutual Insurance Company  
175 Berkeley Street  
Boston, MA 02116

---

<b>Entity:</b>	Liberty Insurance Underwriters Inc Entity ID Number 2538473
<b>Entity Served:</b>	Liberty International Underwriters
<b>Title of Action:</b>	Nicolette Lewis vs. Liberty Mutual Insurance Company; Liberty International Underwriters
<b>Document(s) Type:</b>	Discovery
<b>Nature of Action:</b>	Contract
<b>Court/Agency:</b>	Sonoma County Superior Court, California
<b>Case/Reference No:</b>	261819
<b>Jurisdiction Served:</b>	California
<b>Date Served on CSC:</b>	02/14/2018
<b>Answer or Appearance Due:</b>	30 Days
<b>Originally Served On:</b>	CSC
<b>How Served:</b>	Personal Service
<b>Sender Information:</b>	Heather-Ann T. Young 707-525-8800

---

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

**To avoid potential delay, please do not send your response to CSC**

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | [sop@cscglobal.com](mailto:sop@cscglobal.com)



1 LESLIE R. PERRY (SBN 062390)  
 2 JOHN J. JOHNSON (SBN 114902)  
 3 HEATHER-ANN T. YOUNG (SBN 283211)  
 4 PERRY, JOHNSON, ANDERSON,  
 5 MILLER & MOSKOWITZ, LLP  
 438 First Street, Fourth Floor  
 Santa Rosa, CA 95401  
 Telephone: (707) 525-8800  
 Facsimile: (707) 545-8242

6 Attorney for Plaintiffs  
 7 MARGRETT LEWIS, NICOLETTE LEWIS,  
 ALEXIS LEWIS, and JEFFREY LEWIS

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SONOMA

10 NICOLETTE LEWIS, ALEXIS LEWIS,  
 11 MARGRETT LEWIS; and JEFFREY LEWIS

12 Plaintiff(s),

13 vs.

14 LIBERTY MUTUAL INSURANCE COMPANY,  
 15 LIBERTY INTERNATIONAL UNDERWRITERS,  
 and DOES 1 through 50, inclusive,

16 Defendant(s).

) CASE No. 261819

) Unlimited Civil Action

) **PLAINTIFF NICOLETTE LEWIS'**  
 ) **DECLARATION FOR ADDITIONAL**  
 ) **DISCOVERY**

) Department: 16  
 ) Judge: Hon. Patrick Broderick  
 ) Trial Date: not yet set

20 I, HEATHER-ANN T. YOUNG, declare:

21  
 22 1. I am one of the attorneys for Plaintiffs in this action. The following is true of my  
 23 personal knowledge and if called as a witness I would competently testify thereto.

24 2. I am propounding to Defendant LIBERTY INTERNATIONAL  
 25 UNDERWRITERS, the set of Special Interrogatories, Set One served herewith.

26 3. This set of Special Interrogatories will cause the total number of requests  
 27 propounded to the party to whom they are directed to exceed the number of requests permitted by  
 28 Section 2030.030 of the Civil Code Procedure.

1           4. I have not propounded previous sets of Special Interrogatories. This set contains  
2 73 Special Interrogatories. Form Interrogatories Set One is being served with these Special  
3 Interrogatories.

4           5. I am familiar with the issues and the previous discovery conducted by all the  
5 parties in this case.

6           6. I have personally examined the interrogatories in this set.

7           7. This number of Special Interrogatories is warranted under Section 2030.010 of the  
8 Civil Code of Procedure because of the complexity of this litigation and the numerous factual  
9 issues related to the underlying case. These interrogatories are needed to determine a liability  
10 analysis and uncover key factual questions.

11           8. None of the interrogatories is being propounded for any improper purpose, such as  
12 to harass the party, or the attorney for the party, to whom it is directed, or to cause unnecessary  
13 delay or needless increase in the cost of litigation.

14           I declare under penalty and perjury under the laws of California that the foregoing is true  
15 and correct. Executed this 13<sup>th</sup> day of February, 2018.

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HEATHER-ANN T. YOUNG  
Attorney for Plaintiffs

Case No. SCV261819  
02-05-2018

Form Interrogatories Served on Liberty  
Mutual Insurance Company



DISC-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): — Leslie R. Perry 062390 Perry, Johnson, Anderson, Miller & Mosk 438 First Street, 4th Floor Santa Rosa, CA 95401 TELEPHONE NO.: (707) 525-8800 FAX NO. (Optional): (707) 545-8242 E-MAIL ADDRESS (Optional): perry@perryllaw.net ATTORNEY FOR (Name): Plaintiffs	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sonoma	
SHORT TITLE OF CASE: Lewis v. Liberty Mutual Insurance Company	
<b>FORM INTERROGATORIES-GENERAL</b>	
Asking Party: Plaintiff Nicolette Lewis  Answering Party: Defn Liberty International Underwriters Set No.: One	CASE NUMBER: SCV 261819

### Sec. 1. Instructions to All Parties

- (a) Interrogatories are written questions prepared by a party to an action that are sent to any other party in the action to be answered under oath. The interrogatories below are form interrogatories approved for use in civil cases.
- (b) For time limitations, requirements for service on other parties, and other details, see Code of Civil Procedure sections 2030.010-2030.410 and the cases construing those sections.
- (c) These form interrogatories do not change existing law relating to interrogatories nor do they affect an answering party's right to assert any privilege or make any objection.

### Sec. 2. Instructions to the Asking Party

- (a) These interrogatories are designed for optional use by parties in unlimited civil cases where the amount demanded exceeds \$25,000. Separate interrogatories, *Form Interrogatories - Limited Civil Cases (Economic Litigation)* (form DISC-004), which have no subparts, are designed for use in limited civil cases where the amount demanded is \$25,000 or less; however, those interrogatories may also be used in unlimited civil cases.
- (b) Check the box next to each interrogatory that you want the answering party to answer. Use care in choosing those interrogatories that are applicable to the case.
- (c) You may insert your own definition of **INCIDENT** in Section 4, but only where the action arises from a course of conduct or a series of events occurring over a period of time.
- (d) The interrogatories in section 16.0, Defendant's Contentions-Personal Injury, should not be used until the defendant has had a reasonable opportunity to conduct an investigation or discovery of plaintiff's injuries and damages.
- (e) Additional interrogatories may be attached.

### Sec. 3. Instructions to the Answering Party

- (a) An answer or other appropriate response must be given to each interrogatory checked by the asking party.
- (b) As a general rule, within 30 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. See Code of Civil Procedure sections 2030.260-2030.270 for details.

- (c) Each answer must be as complete and straightforward as the information reasonably available to you, including the information possessed by your attorneys or agents, permits. If an interrogatory cannot be answered completely, answer it to the extent possible.
- (d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.
- (e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.
- (f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.
- (g) If you are asserting a privilege or making an objection to an interrogatory, you must specifically assert the privilege or state the objection in your written response.
- (h) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers:

*I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.*

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(SIGNATURE)

### Sec. 4. Definitions

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

- (a) (Check one of the following):

- ☐ (1) **INCIDENT** includes the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding.

Page 1 of 8



- ☐ (2) **INCIDENT** means (insert your definition here or on a separate, attached sheet labeled "Sec. 4(a)(2)");

(b) **YOU OR ANYONE ACTING ON YOUR BEHALF**

includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

(c) **PERSON** includes a natural person, firm, association, organization, partnership, business, trust, limited liability company, corporation, or public entity.

(d) **DOCUMENT** means a writing, as defined in Evidence Code section 250, and includes the original or a copy of handwriting, typewriting, printing, photostats, photographs, electronically stored information, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

(e) **HEALTH CARE PROVIDER** includes any **PERSON** referred to in Code of Civil Procedure section 667.7(e)(3).

(f) **ADDRESS** means the street address, including the city, state, and zip code.

**Sec. 5. Interrogatories**

The following interrogatories have been approved by the Judicial Council under Code of Civil Procedure section 2033.710:

**CONTENTS**

- 1.0 Identity of Persons Answering These Interrogatories
- 2.0 General Background Information - Individual
- 3.0 General Background Information - Business Entity
- 4.0 Insurance
- 5.0 *[Reserved]*
- 6.0 Physical, Mental, or Emotional Injuries
- 7.0 Property Damage
- 8.0 Loss of Income or Earning Capacity
- 9.0 Other Damages
- 10.0 Medical History
- 11.0 Other Claims and Previous Claims
- 12.0 Investigation - General
- 13.0 Investigation - Surveillance
- 14.0 Statutory or Regulatory Violations
- 15.0 Denials and Special or Affirmative Defenses
- 16.0 Defendant's Contentions Personal Injury
- 17.0 Responses to Request for Admissions
- 18.0 *[Reserved]*
- 19.0 *[Reserved]*
- 20.0 How the Incident Occurred - Motor Vehicle
- 25.0 *[Reserved]*
- 30.0 *[Reserved]*
- 40.0 *[Reserved]*
- 50.0 Contract
- 60.0 *[Reserved]*
- 70.0 Unlawful Detainer *[See separate form DISC-003]*
- 101.0 Economic Litigation *[See separate form DISC-004]*
- 200.0 Employment Law *[See separate form DISC-002]*
- Family Law *[See separate form FL-145]*

**1.0 Identity of Persons Answering These Interrogatories**

- ☒ 1.1 State the name, **ADDRESS**, telephone number, and relationship to you of each **PERSON** who prepared or assisted in the preparation of the responses to these interrogatories. (Do not identify anyone who simply typed or reproduced the responses.)

**2.0 General Background Information - individual**

- ☐ 2.1 State:
- (a) your name;
  - (b) every name you have used in the past; and
  - (c) the dates you used each name.
- ☐ 2.2 State the date and place of your birth.
- ☐ 2.3 At the time of the **INCIDENT**, did you have a driver's license? If so state:
- (a) the state or other issuing entity;
  - (b) the license number and type;
  - (c) the date of issuance; and
  - (d) all restrictions.
- ☐ 2.4 At the time of the **INCIDENT**, did you have any other permit or license for the operation of a motor vehicle? If so, state:
- (a) the state or other issuing entity;
  - (b) the license number and type;
  - (c) the date of issuance; and
  - (d) all restrictions.
- ☐ 2.5 State:
- (a) your present residence **ADDRESS**;
  - (b) your residence **ADDRESSES** for the past five years; and
  - (c) the dates you lived at each **ADDRESS**.
- ☐ 2.6 State:
- (a) the name, **ADDRESS**, and telephone number of your present employer or place of self-employment; and
  - (b) the name, **ADDRESS**, dates of employment, job title, and nature of work for each employer or self-employment you have had from five years before the **INCIDENT** until today.
- ☐ 2.7 State:
- (a) the name and **ADDRESS** of each school or other academic or vocational institution you have attended, beginning with high school;
  - (b) the dates you attended;
  - (c) the highest grade level you have completed; and
  - (d) the degrees received.
- ☐ 2.8 Have you ever been convicted of a felony? If so, for each conviction state:
- (a) the city and state where you were convicted;
  - (b) the date of conviction;
  - (c) the offense; and
  - (d) the court and case number.
- ☐ 2.9 Can you speak English with ease? If not, what language and dialect do you normally use?
- ☐ 2.10 Can you read and write English with ease? If not, what language and dialect do you normally use?



DISC-001

- ☐ 2.11 At the time of the **INCIDENT** were you acting as an agent or employee for any **PERSON**? If so, state:
- the name, **ADDRESS**, and telephone number of that **PERSON**; and
  - a description of your duties.
- ☐ 2.12 At the time of the **INCIDENT** did you or any other person have any physical, emotional, or mental disability or condition that may have contributed to the occurrence of the **INCIDENT**? If so, for each person state:
- the name, **ADDRESS**, and telephone number;
  - the nature of the disability or condition; and
  - the manner in which the disability or condition contributed to the occurrence of the **INCIDENT**.
- ☐ 2.13 Within 24 hours before the **INCIDENT** did you or any person involved in the **INCIDENT** use or take any of the following substances: alcoholic beverage, marijuana, or other drug or medication of any kind (prescription or not)? If so, for each person state:
- the name, **ADDRESS**, and telephone number;
  - the nature or description of each substance;
  - the quantity of each substance used or taken;
  - the date and time of day when each substance was used or taken;
  - the **ADDRESS** where each substance was used or taken;
  - the name, **ADDRESS**, and telephone number of each person who was present when each substance was used or taken; and
  - the name, **ADDRESS**, and telephone number of any **HEALTH CARE PROVIDER** who prescribed or furnished the substance and the condition for which it was prescribed or furnished.

### 3.0 General Background Information - Business Entity

- ☒ 3.1 Are you a corporation? If so, state:
- the name stated in the current articles of incorporation;
  - all other names used by the corporation during the past 10 years and the dates each was used;
  - the date and place of incorporation;
  - the **ADDRESS** of the principal place of business; and
  - whether you are qualified to do business in California.
- ☒ 3.2 Are you a partnership? If so, state:
- the current partnership name;
  - all other names used by the partnership during the past 10 years and the dates each was used;
  - whether you are a limited partnership and, if so, under the laws of what jurisdiction;
  - the name and **ADDRESS** of each general partner; and
  - the **ADDRESS** of the principal place of business.
- ☒ 3.3 Are you a limited liability company? If so, state:
- the name stated in the current articles of organization;
  - all other names used by the company during the past 10 years and the date each was used;
  - the date and place of filing of the articles of organization;
  - the **ADDRESS** of the principal place of business; and
  - whether you are qualified to do business in California.

- ☒ 3.4 Are you a joint venture? If so, state:
- the current joint venture name;
  - all other names used by the joint venture during the past 10 years and the dates each was used;
  - the name and **ADDRESS** of each joint venture; and
  - the **ADDRESS** of the principal place of business.
- ☒ 3.5 Are you an unincorporated association? If so, state:
- the current unincorporated association name;
  - all other names used by the unincorporated association during the past 10 years and the dates each was used; and
  - the **ADDRESS** of the principal place of business.
- ☒ 3.6 Have you done business under a fictitious name during the past 10 years? If so, for each fictitious name state:
- the name;
  - the dates each was used;
  - the state and county of each fictitious name filing; and
  - the **ADDRESS** of the principal place of business.
- ☒ 3.7 Within the past five years has any public entity registered or licensed your business? If so, for each license or registration:
- identify the license or registration;
  - state the name of the public entity; and
  - state the dates of issuance and expiration.

### 4.0 Insurance

- ☐ 4.1 At the time of the **INCIDENT**, was there in effect any policy of insurance through which you were or might be insured in any manner (for example, primary, pro-rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the **INCIDENT**? If so, for each policy state:
- the kind of coverage;
  - the name and **ADDRESS** of the insurance company;
  - the name, **ADDRESS**, and telephone number of each named insured;
  - the policy number;
  - the limits of coverage for each type of coverage contained in the policy;
  - whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company; and
  - the name, **ADDRESS**, and telephone number of the custodian of the policy.
- ☐ 4.2 Are you self-insured under any statute for the damages, claims, or actions that have arisen out of the **INCIDENT**? If so, specify the statute.

### 5.0 [Reserved]

### 6.0 Physical, Mental, or Emotional Injuries

- ☐ 6.1 Do you attribute any physical, mental, or emotional injuries to the **INCIDENT**? (If your answer is "no," do not answer interrogatories 6.2 through 6.7).
- ☐ 6.2 Identify each injury you attribute to the **INCIDENT** and the area of your body affected.



DISC-001

- ☐ 6.3 Do you still have any complaints that you attribute to the **INCIDENT**? If so, for each complaint state:
- (a) a description;
  - (b) whether the complaint is subsiding, remaining the same, or becoming worse; and
  - (c) the frequency and duration.
- ☐ 6.4 Did you receive any consultation or examination (except from expert witnesses covered by Code of Civil Procedure sections 2034.210-2034.310) or treatment from a **HEALTH CARE PROVIDER** for any injury you attribute to the **INCIDENT**? If so, for each **HEALTH CARE PROVIDER** state:
- (a) the name, **ADDRESS**, and telephone number;
  - (b) the type of consultation, examination, or treatment provided;
  - (c) the dates you received consultation, examination, or treatment; and
  - (d) the charges to date.
- ☐ 6.5 Have you taken any medication, prescribed or not, as a result of injuries that you attribute to the **INCIDENT**? If so, for each medication state:
- (a) the name;
  - (b) the **PERSON** who prescribed or furnished it;
  - (c) the date it was prescribed or furnished;
  - (d) the dates you began and stopped taking it; and
  - (e) the cost to date.
- ☐ 6.6 Are there any other medical services necessitated by the injuries that you attribute to the **INCIDENT** that were not previously listed (for example, ambulance, nursing, prosthetics)? If so, for each service state:
- (a) the nature;
  - (b) the date;
  - (c) the cost; and
  - (d) the name, **ADDRESS**, and telephone number of each provider.
- ☐ 6.7 Has any **HEALTH CARE PROVIDER** advised that you may require future or additional treatment for any injuries that you attribute to the **INCIDENT**? If so, for each injury state:
- (a) the name and **ADDRESS** of each **HEALTH CARE PROVIDER**;
  - (b) the complaints for which the treatment was advised; and
  - (c) the nature, duration, and estimated cost of the treatment.

## 7.0 Property Damage

- ☐ 7.1 Do you attribute any loss of or damage to a vehicle or other property to the **INCIDENT**? If so, for each item of property:
- (a) describe the property;
  - (b) describe the nature and location of the damage to the property;

- (c) state the amount of damage you are claiming for each item of property and how the amount was calculated; and
- (d) if the property was sold, state the name, **ADDRESS**, and telephone number of the seller, the date of sale, and the sale price.

- ☐ 7.2 Has a written estimate or evaluation been made for any item of property referred to in your answer to the preceding interrogatory? If so, for each estimate or evaluation state:
- (a) the name, **ADDRESS**, and telephone number of the **PERSON** who prepared it and the date prepared;
  - (b) the name, **ADDRESS**, and telephone number of each **PERSON** who has a copy of it; and
  - (c) the amount of damage stated.
- ☐ 7.3 Has any item of property referred to in your answer to interrogatory 7.1 been repaired? If so, for each item state:
- (a) the date repaired;
  - (b) a description of the repair;
  - (c) the repair cost;
  - (d) the name, **ADDRESS**, and telephone number of the **PERSON** who repaired it;
  - (e) the name, **ADDRESS**, and telephone number of the **PERSON** who paid for the repair.

## 8.0 Loss of Income or Earning Capacity

- ☐ 8.1 Do you attribute any loss of income or earning capacity to the **INCIDENT**? (If your answer is "no," do not answer interrogatories 8.2 through 8.8).
- ☐ 8.2 State:
- (a) the nature of your work;
  - (b) your job title at the time of the **INCIDENT**; and
  - (c) the date your employment began.
- ☐ 8.3 State the last date before the **INCIDENT** that you worked for compensation.
- ☐ 8.4 State your monthly income at the time of the **INCIDENT** and how the amount was calculated.
- ☐ 8.5 State the date you returned to work at each place of employment following the **INCIDENT**.
- ☐ 8.6 State the dates you did not work and for which you lost income as a result of the **INCIDENT**.
- ☐ 8.7 State the total income you have lost to date as a result of the **INCIDENT** and how the amount was calculated.
- ☐ 8.8 Will you lose income in the future as a result of the **INCIDENT**? If so, state:
- (a) the facts upon which you base this contention;
  - (b) an estimate of the amount;
  - (c) an estimate of how long you will be unable to work; and
  - (d) how the claim for future income is calculated.



DISC-001

**9.0 Other Damages**

- ☐ 9.1 Are there any other damages that you attribute to the **INCIDENT**? If so, for each item of damage state:
- (a) the nature;
  - (b) the date it occurred;
  - (c) the amount; and
  - (d) the name, **ADDRESS**, and telephone number of each **PERSON** to whom an obligation was incurred.
- ☐ 9.2 Do any **DOCUMENTS** support the existence or amount of any item of damages claimed in interrogatory 9.1? If so, describe each document and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

**10.0 Medical History**

- ☐ 10.1 At any time before the **INCIDENT** did you have complaints or injuries that involved the same part of your body claimed to have been injured in the **INCIDENT**? If so, for each state:
- (a) a description of the complaint or injury;
  - (b) the dates it began and ended; and
  - (c) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER** whom you consulted or who examined or treated you.
- ☐ 10.2 List all physical, mental, and emotional disabilities you had immediately before the **INCIDENT**. (*You may omit mental or emotional disabilities unless you attribute any mental or emotional injury to the **INCIDENT**.*)
- ☐ 10.3 At any time after the **INCIDENT**, did you sustain injuries of the kind for which you are now claiming damages? If so, for each incident giving rise to an injury state:
- (a) the date and the place it occurred;
  - (b) the name, **ADDRESS**, and telephone number of any other **PERSON** involved;
  - (c) the nature of any injuries you sustained;
  - (d) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER** who you consulted or who examined or treated you; and
  - (e) the nature of the treatment and its duration.

**11.0 Other Claims and Previous Claims**

- ☐ 11.1 Except for this action, in the past 10 years have you filed an action or made a written claim or demand for compensation for your personal injuries? If so, for each action, claim, or demand state:
- (a) the date, time, and place and location (closest street **ADDRESS** or intersection) of the **INCIDENT** giving rise to the action, claim, or demand;
  - (b) the name, **ADDRESS**, and telephone number of each **PERSON** against whom the claim or demand was made or the action filed;

- (c) the court, names of the parties, and case number of any action filed;
- (d) the name, **ADDRESS**, and telephone number of any attorney representing you;
- (e) whether the claim or action has been resolved or is pending; and
- (f) a description of the injury.

- ☐ 11.2 In the past 10 years have you made a written claim or demand for workers' compensation benefits? If so, for each claim or demand state:
- (a) the date, time, and place of the **INCIDENT** giving rise to the claim;
  - (b) the name, **ADDRESS**, and telephone number of your employer at the time of the injury;
  - (c) the name, **ADDRESS**, and telephone number of the workers' compensation insurer and the claim number;
  - (d) the period of time during which you received workers' compensation benefits;
  - (e) a description of the injury;
  - (f) the name, **ADDRESS**, and telephone number of any **HEALTH CARE PROVIDER** who provided services; and
  - (g) the case number at the Workers' Compensation Appeals Board.

**12.0 Investigation-General**

- ☐ 12.1 State the name, **ADDRESS**, and telephone number of each individual:
- (a) who witnessed the **INCIDENT** or the events occurring immediately before or after the **INCIDENT**;
  - (b) who made any statement at the scene of the **INCIDENT**;
  - (c) who heard any statements made about the **INCIDENT** by any individual at the scene; and
  - (d) who **YOU OR ANYONE ACTING ON YOUR BEHALF** claim has knowledge of the **INCIDENT** (except for expert witnesses covered by Code of Civil Procedure section 2034).
- ☐ 12.2 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** interviewed any individual concerning the **INCIDENT**? If so, for each individual state:
- (a) the name, **ADDRESS**, and telephone number of the individual interviewed;
  - (b) the date of the interview; and
  - (c) the name, **ADDRESS**, and telephone number of the **PERSON** who conducted the interview.
- ☐ 12.3 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** obtained a written or recorded statement from any individual concerning the **INCIDENT**? If so, for each statement state:
- (a) the name, **ADDRESS**, and telephone number of the individual from whom the statement was obtained;
  - (b) the name, **ADDRESS**, and telephone number of the individual who obtained the statement;
  - (c) the date the statement was obtained; and
  - (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original statement or a copy.



- ☐ 12.4 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any photographs, films, or videotapes depicting any place, object, or individual concerning the **INCIDENT** or plaintiff's injuries? If so, state:
- (a) the number of photographs or feet of film or videotape;
  - (b) the places, objects, or persons photographed, filmed, or videotaped;
  - (c) the date the photographs, films, or videotapes were taken;
  - (d) the name, **ADDRESS**, and telephone number of the individual taking the photographs, films, or videotapes; and
  - (e) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy of the photographs, films, or videotapes.

- ☐ 12.5 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any diagram, reproduction, or model of any place or thing (except for items developed by expert witnesses covered by Code of Civil Procedure sections 2034.210-2034.310) concerning the **INCIDENT**? If so, for each item state:
- (a) the type (i.e., diagram, reproduction, or model);
  - (b) the subject matter; and
  - (c) the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

- ☐ 12.6 Was a report made by any **PERSON** concerning the **INCIDENT**? If so, state:
- (a) the name, title, identification number, and employer of the **PERSON** who made the report;
  - (b) the date and type of report made;
  - (c) the name, **ADDRESS**, and telephone number of the **PERSON** for whom the report was made; and
  - (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy of the report.

- ☐ 12.7 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** inspected the scene of the **INCIDENT**? If so, for each inspection state:
- (a) the name, **ADDRESS**, and telephone number of the individual making the inspection (except for expert witnesses covered by Code of Civil Procedure sections 2034.210-2034.310); and
  - (b) the date of the inspection.

### 13.0 Investigation-Surveillance

- ☐ 13.1 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** conducted surveillance of any individual involved in the **INCIDENT** or any party to this action? If so, for each surveillance state:
- (a) the name, **ADDRESS**, and telephone number of the individual or party;
  - (b) the time, date, and place of the surveillance;
  - (c) the name, **ADDRESS**, and telephone number of the individual who conducted the surveillance; and
  - (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy of any surveillance photograph, film, or videotape.

- ☐ 13.2 Has a written report been prepared on the surveillance? If so, for each written report state:
- (a) the title;
  - (b) the date;
  - (c) the name, **ADDRESS**, and telephone number of the individual who prepared the report; and
  - (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy.

### 14.0 Statutory or Regulatory Violations

- ☐ 14.1 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** contend that any **PERSON** involved in the **INCIDENT** violated any statute, ordinance, or regulation and that the violation was a legal (proximate) cause of the **INCIDENT**? If so, identify the name, **ADDRESS**, and telephone number of each **PERSON** and the statute, ordinance, or regulation that was violated.
- ☐ 14.2 Was any **PERSON** cited or charged with a violation of any statute, ordinance, or regulation as a result of this **INCIDENT**? If so, for each **PERSON** state:
- (a) the name, **ADDRESS**, and telephone number of the **PERSON**;
  - (b) the statute, ordinance, or regulation allegedly violated;
  - (c) whether the **PERSON** entered a plea in response to the citation or charge and, if so, the plea entered; and
  - (d) the name and **ADDRESS** of the court or administrative agency, names of the parties, and case number.

### 15.0 Denials and Special or Affirmative Defenses

- ☐ 15.1 Identify each denial of a material allegation and each special or affirmative defense in your pleadings and for each:
- (a) state all facts upon which you base the denial or special or affirmative defense;
  - (b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts; and
  - (c) identify all **DOCUMENTS** and other tangible things that support your denial or special or affirmative defense, and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

### 16.0 Defendant's Contentions-Personal Injury

- ☐ 16.1 Do you contend that any **PERSON**, other than you or plaintiff, contributed to the occurrence of the **INCIDENT** or the injuries or damages claimed by plaintiff? If so, for each **PERSON**:
- (a) state the name, **ADDRESS**, and telephone number of the **PERSON**;
  - (b) state all facts upon which you base your contention;
  - (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
  - (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.
- ☐ 16.2 Do you contend that plaintiff was not injured in the **INCIDENT**? If so:
- (a) state all facts upon which you base your contention;
  - (b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
  - (c) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.



DISC-001

- ☐ 16.3 Do you contend that the injuries or the extent of the injuries claimed by plaintiff as disclosed in discovery proceedings thus far in this case were not caused by the **INCIDENT**? If so, for each injury:
- identify it;
  - state all facts upon which you base your contention;
  - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
  - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.
- ☐ 16.4 Do you contend that any of the services furnished by any **HEALTH CARE PROVIDER** claimed by plaintiff in discovery proceedings thus far in this case were not due to the **INCIDENT**? If so:
- identify each service;
  - state all facts upon which you base your contention;
  - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
  - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.
- ☐ 16.5 Do you contend that any of the costs of services furnished by any **HEALTH CARE PROVIDER** claimed as damages by plaintiff in discovery proceedings thus far in this case were not necessary or unreasonable? If so:
- identify each cost;
  - state all facts upon which you base your contention;
  - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
  - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.
- ☐ 16.6 Do you contend that any part of the loss of earnings or income claimed by plaintiff in discovery proceedings thus far in this case was unreasonable or was not caused by the **INCIDENT**? If so:
- identify each part of the loss;
  - state all facts upon which you base your contention;
  - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
  - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.
- ☐ 16.7 Do you contend that any of the property damage claimed by plaintiff in discovery Proceedings thus far in this case was not caused by the **INCIDENT**? If so:
- identify each item of property damage;
  - state all facts upon which you base your contention;
  - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
  - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

- ☐ 16.8 Do you contend that any of the costs of repairing the property damage claimed by plaintiff in discovery proceedings thus far in this case were unreasonable? If so:
- identify each cost item;
  - state all facts upon which you base your contention;
  - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
  - identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.
- ☐ 16.9 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** (for example, insurance bureau index reports) concerning claims for personal injuries made before or after the **INCIDENT** by a plaintiff in this case? If so, for each plaintiff state:
- the source of each **DOCUMENT**;
  - the date each claim arose;
  - the nature of each claim; and
  - the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.
- ☐ 16.10 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** concerning the past or present physical, mental, or emotional condition of any plaintiff in this case from a **HEALTH CARE PROVIDER** not previously identified (except for expert witnesses covered by Code of Civil Procedure sections 2034.210-2034.310)? If so, for each plaintiff state:
- the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER**;
  - a description of each **DOCUMENT**; and
  - the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

**17.0 Responses to Request for Admissions**

- ☒ 17.1 Is your response to each request for admission served with these interrogatories an unqualified admission? If not, for each response that is not an unqualified admission:
- state the number of the request;
  - state all facts upon which you base your response;
  - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts; and
  - identify all **DOCUMENTS** and other tangible things that support your response and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

18.0 [Reserved]

19.0 [Reserved]

**20.0 How the Incident Occurred-Motor Vehicle**

- ☐ 20.1 State the date, time, and place of the **INCIDENT** (closest street **ADDRESS** or intersection).
- ☐ 20.2 For each vehicle involved in the **INCIDENT**, state:
- the year, make, model, and license number;
  - the name, **ADDRESS**, and telephone number of the driver;



- (c) the name, **ADDRESS**, and telephone number of each occupant other than the driver;
- (d) the name, **ADDRESS**, and telephone number of each registered owner;
- (e) the name, **ADDRESS**, and telephone number of each lessee;
- (f) the name, **ADDRESS**, and telephone number of each owner other than the registered owner or lien holder; and
- (g) the name of each owner who gave permission or consent to the driver to operate the vehicle.

- ☐ 20.3 State the **ADDRESS** and location where your trip began and the **ADDRESS** and location of your destination.
- ☐ 20.4 Describe the route that you followed from the beginning of your trip to the location of the **INCIDENT**, and state the location of each stop, other than routine traffic stops, during the trip leading up to the **INCIDENT**.
- ☐ 20.5 State the name of the street or roadway, the lane of travel, and the direction of travel of each vehicle involved in the **INCIDENT** for the 500 feet of travel before the **INCIDENT**.
- ☐ 20.6 Did the **INCIDENT** occur at an intersection? If so, describe all traffic control devices, signals, or signs at the intersection.
- ☐ 20.7 Was there a traffic signal facing you at the time of the **INCIDENT**? If so, state:
  - (a) your location when you first saw it;
  - (b) the color;
  - (c) the number of seconds it had been that color; and
  - (d) whether the color changed between the time you first saw it and the **INCIDENT**.
- ☐ 20.8 State how the **INCIDENT** occurred, giving the speed, direction, and location of each vehicle involved:
  - (a) just before the **INCIDENT**;
  - (b) at the time of the **INCIDENT**; and (c) just after the **INCIDENT**.
- ☐ 20.9 Do you have information that a malfunction or defect in a vehicle caused the **INCIDENT**? If so:
  - (a) identify the vehicle;
  - (b) identify each malfunction or defect;
  - (c) state the name, **ADDRESS**, and telephone number of each **PERSON** who is a witness to or has information about each malfunction or defect; and
  - (d) state the name, **ADDRESS**, and telephone number of each **PERSON** who has custody of each defective part.
- ☐ 20.10 Do you have information that any malfunction or defect in a vehicle contributed to the injuries sustained in the **INCIDENT**? If so:
  - (a) identify the vehicle;
  - (b) identify each malfunction or defect;
  - (c) state the name, **ADDRESS**, and telephone number of each **PERSON** who is a witness to or has information about each malfunction or defect; and

- (d) state the name, **ADDRESS**, and telephone number of each **PERSON** who has custody of each defective part.

- ☐ 20.11 State the name, **ADDRESS**, and telephone number of each owner and each **PERSON** who has had possession since the **INCIDENT** of each vehicle involved in the **INCIDENT**.

25.0 [Reserved]

30.0 [Reserved]

40.0 [Reserved]

#### 50.0 Contract

- ☐ 50.1 For each agreement alleged in the pleadings:
  - (a) identify each **DOCUMENT** that is part of the agreement and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
  - (b) state each part of the agreement not in writing, the name, **ADDRESS**, and telephone number of each **PERSON** agreeing to that provision, and the date that part of the agreement was made;
  - (c) identify all **DOCUMENTS** that evidence any part of the agreement not in writing and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
  - (d) identify all **DOCUMENTS** that are part of any modification to the agreement, and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
  - (e) state each modification not in writing, the date, and the name, **ADDRESS**, and telephone number of each **PERSON** agreeing to the modification, and the date the modification was made;
  - (f) identify all **DOCUMENTS** that evidence any modification of the agreement not in writing and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**.
- ☐ 50.2 Was there a breach of any agreement alleged in the pleadings? If so, for each breach describe and give the date of every act or omission that you claim is the breach of the agreement.
- ☐ 50.3 Was performance of any agreement alleged in the pleadings excused? If so, identify each agreement excused and state why performance was excused.
- ☐ 50.4 Was any agreement alleged in the pleadings terminated by mutual agreement, release, accord and satisfaction, or novation? If so, identify each agreement terminated, the date of termination, and the basis of the termination.
- ☐ 50.5 Is any agreement alleged in the pleadings unenforceable? If so, identify each unenforceable agreement and state why it is unenforceable.
- ☐ 50.6 Is any agreement alleged in the pleadings ambiguous? If so, identify each ambiguous agreement and state why it is ambiguous.

60.0 [Reserved]

Case No. SCV261819

02-14-2018

Request for Production of Documents  
served on Liberty International  
Underwriters



1 LESLIE R. PERRY (SBN 062390)  
 2 JOHN J. JOHNSON (SBN 114902)  
 3 HEATHER-ANN T. YOUNG (SBN 283211)  
 4 PERRY, JOHNSON, ANDERSON,  
 5 MILLER & MOSKOWITZ, LLP  
 438 First Street, Fourth Floor  
 Santa Rosa, CA 95401  
 Telephone: (707) 525-8800  
 Facsimile: (707) 545-8242

6 Attorney for Plaintiffs  
 7 MARGRETT LEWIS, NICOLETTE LEWIS,  
 8 ALEXIS LEWIS, and JEFFREY LEWIS

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SONOMA

11 NICOLETTE LEWIS, ALEXIS LEWIS,  
 12 MARGRETT LEWIS; and JEFFREY LEWIS

) CASE No. 261819

) Unlimited Civil Action

13 Plaintiff(s),

14 vs.

15 LIBERTY MUTUAL INSURANCE COMPANY,  
 16 LIBERTY INTERNATIONAL UNDERWRITERS,  
 17 and DOES 1 through 50, inclusive,

) **PLAINTIFF NICOLETTE LEWIS'**  
 ) **REQUEST FOR PRODUCTION OF**  
 ) **DOCUMENTS TO DEFENDANT**  
 ) **LIBERTY INTERNATIONAL**  
 ) **UNDERWRITERS**  
 ) **[SET ONE]**

18 Defendant(s).

) Department: 16  
 ) Judge: Hon. Patrick Broderick  
 ) Trial Date: not yet set

20  
 21 REQUESTING PARTY: Plaintiff NICOLETTE LEWIS

22 RESPONDING PARTIES: Defendant LIBERTY INTERNATIONAL UNDERWRITERS

23 SET NUMBER: ONE

24  
 25 Pursuant to Code of Civil Procedure section 2031.010 et seq., Plaintiff NICOLETTE  
 26 LEWIS demands that Defendant LIBERTY INTERNATIONAL UNDERWRITERS, produce for  
 27 inspection and copying at the Law Offices of Perry, Johnson, Anderson, Miller & Moskowitz,  
 28 LLP, 438 First Street, 4<sup>th</sup> Floor, Santa Rosa, California 95401 within the time proscribed by Code

1 of Civil Procedure section 2031.260, the following specified items in Defendants' possession,  
2 custody or control.

### 3 DEFINITIONS

4 A. As used herein the word "BROKER" means any person or entity transacting insurance on  
5 behalf of ECOSMART, including, but not limited to any representative or agent of OAMPS  
6 Insurance Brokers and/or Arthur J. Gallagher Insurance Brokers (including James Forster and/or  
7 Melissa Mudge).

8 B. As used herein the word "CHANGE" means a difference or reduction in coverage, risk,  
9 premium.

10 C. As used herein the words "CLAIMS MADE" means any claim made during the policy  
11 period, , regardless of when the act that gave rise to the claim took place.

12 D. As used herein, the word "COMMUNICATION(S)" means any form of communication,  
13 including, but not limited to emails, letters (delivered by mail, personal delivery or otherwise),  
14 text, memorandum, facsimile, documents made available on the internet for viewing, downloading  
15 OR uploading (e.g. sharing Google Documents, Sharefile, Dropbox, etc.) and includes direct  
16 communications and also communications in which an individual is copied, blind copied, or in  
17 some fashion included in, or made privy to, the COMMUNICATION.

18 E. As used herein the words "DATE OF PRODUCTION" means the date on which the  
19 DOCUMENTS are produced.

20 F. As used herein, the word "DOCUMENT" or "DOCUMENTS" is used herein to mean all  
21 "writings" as defined in California Evidence Code Section 250 (see text, below), including, but  
22 not limited to, all written, recorded, or graphic material, however produced or reproduced, of any  
23 kind in your possession, custody, or control, or in the possession, custody, or control of any  
24 officers, members, partners, employees, servants, or your agents or representatives, including,  
25 without limitation, letters, correspondence, telegrams, memoranda, records, minutes, contracts,  
26 agreements, memoranda, or records of telephone or personal conversations or conferences,  
27 interoffice communications, emails, sound recordings, handwritings, ELECTRONICALLY  
28

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MILLER & MOSKOWITZ LLP



1 STORED INFORMATION, electronic data processing inputs, and memories of all kinds,  
 2 including hard drives, CD ROM data, tapes and discs, computer reports and printouts, microfilm,  
 3 bulletins, circulars, pamphlets, studies, notices, summaries, reports, books, teletype messages, bills  
 4 of lading, invoices, work sheets, and index cards, or copies of such documents where originals are  
 5 not available. The term "document" or "documents" includes any and all matter that relates in  
 6 whole or in part to the subject referred to in a demand to produce. Where a document has been  
 7 prepared in several copies that are not identical (or which by reason of subsequent modification,  
 8 addition, or notation are no longer identical), each non-identical copy is a separate "document."  
 9 DOCUMENT includes any COMMUNICATION.

10  
 11 Evidence Code Section 250: "Writing" means handwriting, typewriting, printing,  
 12 photostating, photographing, photocopying, transmitting by electronic mail or facsimile,  
 13 and every other means of recording upon any tangible thing, any form of communication  
 14 or representation, including letters, words, pictures, sounds, or symbols, or combinations  
 15 thereof, and any record thereby created, regardless of the manner in which the record has  
 16 been stored."

17 G. As used herein the word "ECOSMART" means EcoSmart, Inc., its agents, employees,  
 18 attorneys, accountants, investigators, insurance broker(s) and anyone else acting on its behalf,  
 19 The Fire Company Pty Ltd, Esmart Group Pty Ltd, any employee, representative or agent of  
 20 OAMPS Insurance Brokers and/or Arthur J. Gallagher Insurance Brokers (including James Forster  
 21 and/or Melissa Mudge).

22 H. As used herein the words "ECOSMART PRODUCT(S)" means any fuel produced by  
 23 ECOSMART that is intended for use by consumers, including but not limited to E-NRG.

24 I. As used herein the word "ELECTRONIC" means relating to technology having electrical,  
 25 digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

26 J. As used herein the words "ELECTRONICALLY STORED INFORMATION" means  
 27 information that is stored in an ELECTRONIC medium.  
 28



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1 K. As used herein the word "EMPLOYEE" means an employee as defined in Cal. Labor  
2 Code §3351 to wit: every person in the service of an employer under any appointment or contract  
3 of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully  
4 employed.

5 L. As used herein the word "INSURANCE" means any form of liability insurance including,  
6 but not limited to General, Products OR Combined General & Products Liability Policies  
7 (including INSURANCE POLICY #1 or INSURANCE POLICY #2).

8 M. As used herein the words "INSURANCE POLICY #1" means Liberty International  
9 Underwriters Combined General & Products Liability Policy #ME-CAS-12-438176 with a period  
10 of insurance 4 p.m. April 30, 2013 to 4 p.m. April 30, 2014. (Exhibit 1)

11 N. As used herein the words "INSURANCE POLICY #2" means Liberty International  
12 Underwriters Combined General & Products Liability Policy #SY-CAS-13-438167 with a period  
13 of insurance 4 p.m. April 30, 2014 to 4 p.m. April 30, 2015. (Exhibit 2)

14 O. As used herein the word "LAWSUIT(S)" means any lawsuit based on personal injuries or  
15 death resulting from an ECOSMART product.

16 P. As used herein the words "LEWIS V. ECOSMART" means Lewis v. EcoSmart et al.,  
17 Sonoma County Superior Court Case No. SCV-256907. (Exhibit 3)

18 Q. As used herein the words "LIBERTY MUTUAL INSURANCE COMPANY" means  
19 Liberty Mutual Insurance Company and any agent, employees, representatives, attorneys (as to  
20 non-privileged communications), investigators, and anyone else acting on its or Liberty Mutual  
21 Insurance Company's behalf, or of any subsidiary or entity related to either named entity.

22 R. As used herein the words "NOTIFY" or "NOTIFIED" means put on notice or advise or  
23 report to in any manner, whether formally, informally or otherwise.

24 S. As used herein the word "OR" means and/or.

25 T. As used herein the word "PERSON" includes a natural person, firm, association,  
26  
27  
28

organization, partnership, business, trust, corporation or public entity.

U. As used herein the word "PRODUCE" shall mean to present the original document for copying at the offices of Perry, Johnson, Anderson, Miller & Moskowitz at 438 First Street, Fourth Floor, Santa Rosa, California 95401 or, in the alternative, to supply Plaintiffs' attorneys with an exact copy of the document. If any document or portion thereof is not produced, you are asked to identify the document and to give the reason that it is not produced.

V. As used herein, the words "REGARDING" or "RELATING" when used with respect to documents shall mean any and all documents which in in any or in any manner refer to, relate to, reflect, concern, contain, embody, or describe the subject matter referred to in any of the particular document demands made below.

W. As used herein the word "RELATIONSHIP" means any way that Liberty Mutual Insurance Company is connected to or involved with Liberty International Underwriters, whether as an owner, subsidiary, a division, a trading company for, or otherwise.

X. As used herein the word "RENEWAL" means the continuation of insurance coverage.

Y. As used herein the words "TRADING NAME" refers to "trading name" as that term is used in INSURANCE POLICY #1 and INSURANCE POLICY #2.

Z. As used herein, the words, "YOU" and "YOUR" means Liberty International Underwriters and any agent, employees, representatives, attorneys (as to non-privileged communications), investigators, and anyone else acting on behalf of either entity, or of any subsidiary or entity(ies) related to Liberty International Underwriters.

#### NON-PRODUCTION

If any document falling within the demanding party's request is considered to be excluded from production on the grounds of an objection or privilege, responding party shall include in the written responses to said request a list of the documents so withheld from the production, identifying each document by: date, name, title and address of addressor and addressee; name, title



1 and address of each other person to whom a copy of the document was sent; general character of  
 2 the document to be exempt from production. If responding parties have at any time relinquished  
 3 possession, custody or control of or destroyed any document falling within demanding party's  
 4 request, responding parties shall identify each document falling within demanding party's request,  
 5 responding parties shall identify each document as above and as to existing documents identify the  
 6 persons, if any, who currently have custody, possession or control of them.

7 For each document which you fail or refuse to produce, you are to provide all of the following  
 8 information:

- 9 1. The exact name and title by which you refer to it;
- 10 2. The date and all identifying numbers on it;
- 11 3. The identity of each person who wrote, signed, initialed, or otherwise participated in
- 12 the execution of the document;
- 13 4. The identity of each person having custody or control of the document; and
- 14 5. Each reason why you have failed or refused to produce such documents.

#### 15 **DOCUMENTS TO BE PRODUCED**

##### 16 **REQUEST NO. 1:**

17 All DOCUMENTS RELATING to any California licenses held by YOU've held in the  
 18 past 10 years.

##### 19 **REQUEST NO. 2:**

20 All DOCUMENTS RELATING to that portion of the Liability Policy Form LIU-AUS-  
 21 CAS-CGL-2000001 referenced in INSURANCE POLICY #1 which states "this schedule attaches  
 22 and forms part of the LIU part of LIU Combined General & Products Liability Policy Form LIU-  
 23 AUS-CAS-CGL-2000001 and is valid only if it is signed and dated below by a person duly  
 24 authorized by Liberty International Underwriters."  
 25  
 26  
 27  
 28



**REQUEST NO. 3:**

All DOCUMENTS RELATING to INSURANCE POLICY #1.

**REQUEST NO. 4:**

All DOCUMENTS RELATING to INSURANCE POLICY #2.

**REQUEST NO. 5:**

All COMMUNICATIONS between YOU and ECOSMART from April 30, 2013 to DATE  
OF PRODUCTION.

**REQUEST NO. 6:**

All COMMUNICATIONS between YOU and LIBERTY MUTUAL INSURANCE  
COMPANY from April 30, 2013 to DATE OF PRODUCTION REGARDING ECOSMART.

**REQUEST NO. 7:**

All COMMUNICATIONS between YOU and ECOSMART RELATING to INSURANCE  
POLICY #1.

**REQUEST NO. 8:**

All COMMUNICATIONS between YOU and LIBERTY MUTUAL INSURANCE  
COMPANY RELATING to INSURANCE POLICY #1.

**REQUEST NO. 9:**

All COMMUNICATIONS between YOU and ECOSMART RELATING to INSURANCE  
POLICY #2.

**REQUEST NO. 10:**

All COMMUNICATIONS between YOU and a BROKER RELATING to INSURANCE  
POLICY #1.

**REQUEST NO. 11:**

All COMMUNICATIONS between YOU and a BROKER RELATING to INSURANCE

1 POLICY #2.

2 **REQUEST NO. 12:**

3 All COMMUNICATIONS between YOU and a BROKER REGARDING ECOSMART  
4 from April 30, 2013 to DATE OF PRODUCTION.

5 **REQUEST NO. 13:**

6 All COMMUNICATIONS between YOU and a BROKER REGARDING INSURANCE  
7 for ECOSMART from April 30, 2013 to DATE OF PRODUCTION.

8 **REQUEST NO. 14:**

9 All COMMUNICATIONS between YOU and ECOSMART RELATING to INSURANCE  
10 POLICY #2.

11 **REQUEST NO. 15:**

12 All DOCUMENTS RELATING to RENEWAL of INSURANCE POLICY #1.

13 **REQUEST NO. 16:**

14 All COMMUNICATIONS involving YOU and ECOSMART RELATING to RENEWAL  
15 of INSURANCE POLICY #1.

16 **REQUEST NO. 17:**

17 All COMMUNICATIONS involving YOU and LIBERTY MUTUAL INSURANCE  
18 COMPANY RELATING to RENEWAL of INSURANCE POLICY #1.

19 **REQUEST NO. 18:**

20 All DOCUMENTS RELATING to any CHANGE in INSURANCE POLICY #1 from  
21 April 30, 2013 to DATE OF PRODUCTION.

22 **REQUEST NO. 19:**

23 All COMMUNICATIONS involving YOU and ECOSMART RELATING to any  
24 CHANGE in INSURANCE POLICY #1 from April 30, 2013 to DATE OF PRODUCTION.

**REQUEST NO. 20:**

All COMMUNICATIONS involving YOU and LIBERTY MUTUAL INSURANCE COMPANY RELATING to any CHANGE in INSURANCE POLICY #1 from April 30, 2013 to DATE OF PRODUCTION.

**REQUEST NO. 21:**

All COMMUNICATIONS involving YOU and a BROKER RELATING to any CHANGE in INSURANCE POLICY #1 from April 30, 2013 to DATE OF PRODUCTION.

**REQUEST NO. 22:**

All COMMUNICATIONS involving YOU and ECOSMART RELATING to INSURANCE POLICY #2.

**REQUEST NO. 23:**

All COMMUNICATIONS involving YOU and LIBERTY MUTUAL INSURANCE COMPANY RELATING to INSURANCE POLICY #2.

**REQUEST NO. 24:**

All COMMUNICATIONS involving YOU and a BROKER RELATING to INSURANCE POLICY #2.

**REQUEST NO. 25:**

All DOCUMENTS RELATING to the denial of coverage to ECOSMART in *LEWIS V. ECOSMART*.

**REQUEST NO. 26:**

All COMMUNICATIONS between YOU and a BROKER RELATING to the denial of coverage to ECOSMART in *LEWIS V. ECOSMART*.

**REQUEST NO. 27:**

All COMMUNICATIONS between YOU and a BROKER RELATING to the denial of



1 coverage to ECOSMART in *LEWIS V. ECOSMART*.

2 **REQUEST NO. 28:**

3 All DOCUMENTS relating to YOUR decision to decline to provide a defense to  
4 ECOSMART in *LEWIS V. ECOSMART*.

5 **REQUEST NO. 29:**

6 All DOCUMENTS RELATING to the reason for CHANGE to INSURANCE POLICY #1  
7 from April 30, 2013 to DATE OF PRODUCTION.

8 **REQUEST NO. 30:**

9 All DOCUMENTS RELATING to NOTICE by YOU to ECOSMART REGARDING any  
10 CHANGE to INSURANCE POLICY #1 from April 30, 2013 to DATE OF PRODUCTION.

11 **REQUEST NO. 31:**

12 All DOCUMENTS RELATING to NOTICE by YOU to a BROKER REGARDING any  
13 CHANGE to INSURANCE POLICY #1 from April 30, 2013 to DATE OF PRODUCTION.

14 **REQUEST NO. 32:**

15 All DOCUMENTS RELATING to replacement of Endorsement 3, Exclusion 7.24 in  
16 INSURANCE POLICY #2 including, but not limited to, DOCUMENTS RELATING to the  
17 decision to include this exclusion in INSURANCE POLICY #2.

18 **REQUEST NO. 33:**

19 All DOCUMENTS REGARDING NOTICE to ECOSMART that Exclusion 7.24 was  
20 inserted into INSURANCE POLICY #2.

21 **REQUEST NO. 34:**

22 All COMMUNICATIONS involving YOU and ECOSMART relating to Exclusion 7.24 of  
23 INSURANCE POLICY #2.

24 ///

**REQUEST NO. 35:**

All COMMUNICATIONS involving YOU and LIBERTY MUTUAL INSURANCE COMPANY relating to Exclusion 7.24 of INSURANCE POLICY #2.

**REQUEST NO. 36:**

All COMMUNICATIONS involving YOU and a BROKER relating to Exclusion 7.24 of INSURANCE POLICY #2.

**REQUEST NO. 37:**

All DOCUMENTS RELATING to Endorsement 4 in INSURANCE POLICY #2 including, but not limited to DOCUMENTS REGARDING the decision to include this Endorsement in INSURANCE POLICY #2.

**REQUEST NO. 38:**

All DOCUMENTS REGARDING NOTICE to ECOSMART that Endorsement 4 was inserted into INSURANCE POLICY #2.

**REQUEST NO. 39:**

All COMMUNICATIONS involving YOU and ECOSMART RELATING to Endorsement 4 of INSURANCE POLICY #2.

**REQUEST NO. 40:**

All COMMUNICATIONS involving YOU and LIBERTY MUTUAL INSURANCE COMPANY RELATING to Endorsement 4 of INSURANCE POLICY #2.

**REQUEST NO. 41:**

All COMMUNICATIONS involving YOU and a BROKER RELATING to Endorsement 4 of INSURANCE POLICY #2.

**REQUEST NO. 42:**

All DOCUMENTS RELATING to the increase in premium to AUD \$150,000 for

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1 INSURANCE POLICY #2.

2 **REQUEST NO. 43:**

3 All DOCUMENTS REGARDING NOTICE to ECOSMART that the premium for  
4 INSURANCE POLICY #2 was AUD \$150,000.

5 **REQUEST NO. 44:**

6 All COMMUNICATIONS involving YOU and ECOSMART RELATING to the increase  
7 of premium to AUD \$150,000 for INSURANCE POLICY #2.

8 **REQUEST NO. 45:**

9 All COMMUNICATIONS involving YOU and LIBERTY MUTUAL INSURANCE  
10 COMPANY RELATING to the increase of premium to AUD \$150,000 for INSURANCE  
11 POLICY #2.

12 **REQUEST NO. 46:**

13 All COMMUNICATIONS involving YOU and a BROKER RELATING to the increase of  
14 premium to AUD \$150,000 for INSURANCE POLICY #2.

15 **REQUEST NO. 47:**

16 All DOCUMENTS RELATING to the liability limit of \$2,500,000 in Endorsement 4 to  
17 INSURANCE POLICY #2.

18 **REQUEST NO. 48:**

19 All DOCUMENTS REGARDING NOTICE to ECOSMART of the liability limit of  
20 \$2,500,000 in Endorsement 4 to INSURANCE POLICY #2.

21 **REQUEST NO. 49:**

22 All COMMUNICATIONS involving YOU and ECOSMART REGARDING the liability  
23 limit of \$2,500,000 in Endorsement 4 to INSURANCE POLICY #2.

24  
25  
26  
27  
28 ///

PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ LLP



**REQUEST NO. 50:**

All COMMUNICATIONS involving YOU and LIBERTY MUTUAL INSURANCE COMPANY REGARDING the liability limit of AUD \$2,500,000 in Endorsement 4 to INSURANCE POLICY #2.

**REQUEST NO. 51:**

All COMMUNICATIONS involving YOU and a BROKER REGARDING the liability limit of \$2,500,000 in Endorsement 4 to INSURANCE POLICY #2.

**REQUEST NO. 52:**

All DOCUMENTS RELATING to YOUR denial of coverage to ECOSMART in *LEWIS v. ECOSMART*.

**REQUEST NO. 53:**

All COMMUNICATIONS between YOU and LIBERTY MUTUAL INSURANCE COMPANY RELATING to the denial of coverage to ECOSMART in *LEWIS V. ECOSMART*.

**REQUEST NO. 54:**

All DOCUMENTS RELATING to YOUR refusal to indemnify ECOSMART in *LEWIS v. ECOSMART*.

**REQUEST NO. 55:**

All DOCUMENTS RELATING to *LEWIS v. ECOSMART*.

**REQUEST NO. 56:**

All DOCUMENTS RELATING to LAWSUITS against ECOSMART from April 30, 2013 to June 30, 2014.

**REQUEST NO. 57:**

All DOCUMENTS RELATING to flame arrestors REGARDING ECOSMART PRODUCT(S).

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MILLER & MOSKOWITZ LLP

**REQUEST NO. 58:**

All DOCUMENTS RELATING to YOUR knowledge of burn injuries from ECOSMART PRODUCT(S) from April 30, 2013 to June 30, 2014.

**REQUEST NO. 59:**

All DOCUMENTS RELATING to any CLAIMS MADE against ECOSMART from April 30, 2013 to June 30, 2014.

**REQUEST NO. 60:**

All DOCUMENTS REGARDING the legal RELATIONSHIP between YOU and LIBERTY MUTUAL INSURANCE COMPANY.

**REQUEST NO 61:**

DOCUMENTS REGARDING what TRADING NAME means when the term is used by YOU in YOUR insurance policies.

**REQUEST NO. 62:**

All DOCUMENTS REGARDING the registration of "Liberty International Underwriters" as a TRADING NAME, or other similar business name registration, with the Government of Australia or any state or local jurisdiction therein.

**REQUEST NO. 63:**

ALL DOCUMENTS REGARDING the corporate formation of LIBERTY INTERNATIONAL UNDERWRITERS in Australia or any state jurisdiction therein.

**REQUEST NO. 64:**

All DOCUMENTS REGARDING the identity of and number of shares held by each beneficial owner of LIBERTY INTERNATIONAL UNDERWRITERS.

**REQUEST NO. 65:**

All DOCUMENTS REGARDING the nomination, election, or appointment of directors

1 and officers of LIBERTY INTERNATIONAL UNDERWRITERS.

2 **REQUEST NO. 66:**

3 All DOCUMENTS REGARDING periodic, special, or current corporate governance  
4 reports from LIBERTY INTERNATIONAL UNDERWRITERS.

5 **REQUEST NO. 67:**

6 All DOCUMENTS REGARDING the authority of LIBERTY INTERNATIONAL  
7 UNDERWRITERS to execute insurance policies using the "Liberty Mutual Insurance Company"  
8 name.  
9

10 **REQUEST NO. 68:**

11 All DOCUMENTS identified in YOUR responses to Special Interrogatories Set One  
12 served herewith.  
13

14 **REQUEST NO. 69:**

15 All DOCUMENTS identified in YOUR responses to Form Interrogatories Set One served  
16 herewith.  
17

18 PERRY, JOHNSON, ANDERSON,  
19 MILLER & MOSKOWITZ, LLP

20 DATED: February 13, 2018

By: 

21 LESLIE R. PERRY  
22 HEATHER-ANN YOUNG  
23 Attorneys for Plaintiffs  
24 NICOLETTE LEWIS, ALEXIS LEWIS,  
25 MARGRETT LEWIS and JEFFREY  
26 LEWIS  
27  
28



Case No. SCV261819

02-14-2018

Special Interrogatories served on Liberty  
International Underwriters

1 LESLIE R. PERRY (SBN 062390)  
 2 JOHN J. JOHNSON (SBN 114902)  
 3 HEATHER-ANN T. YOUNG (SBN 283211)  
 4 PERRY, JOHNSON, ANDERSON,  
 5 MILLER & MOSKOWITZ, LLP  
 438 First Street, Fourth Floor  
 Santa Rosa, CA 95401  
 Telephone: (707) 525-8800  
 Facsimile: (707) 545-8242

6 Attorney for Plaintiffs  
 7 MARGRETT LEWIS, NICOLETTE LEWIS,  
 8 ALEXIS LEWIS, and JEFFREY LEWIS

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SONOMA

11 NICOLETTE LEWIS, ALEXIS LEWIS,  
 12 MARGRETT LEWIS; and JEFFREY LEWIS

) CASE No. 261819

) Unlimited Civil Action

13 Plaintiff(s),

) **PLAINTIFF NICOLETTE LEWIS'**  
 ) **SPECIAL INTERROGATORIES TO**  
 ) **DEFENDANT LIBERTY**  
 ) **INTERNATIONAL UNDERWRITERS**  
 ) **[SET ONE]**

14 vs.

15 LIBERTY MUTUAL INSURANCE COMPANY,  
 16 LIBERTY INTERNATIONAL UNDERWRITERS,  
 and DOES 1 through 50, inclusive,

) Department: 16  
 ) Judge: Hon. Patrick Broderick  
 ) Trial Date: not yet set

17 Defendant(s).

18  
 19  
 20  
 21 REQUESTING PARTY: Plaintiff NICOLETTE LEWIS

22 RESPONDING PARTIES: Defendant LIBERTY INTERNATIONAL UNDERWRITERS

23 SET NUMBER: ONE

24  
 25 Pursuant to Code of Civil Procedure section 2030.010 et seq., Plaintiff NICOLETTE  
 26 LEWIS requests that Defendant LIBERTY INTERNATIONAL UNDERWRITERS,  
 27 answer the following interrogatories under oath within 30 days from the date of service.  
 28

## DEFINITIONS

A. As used herein the word "BROKER" means anyone or entity transacting insurance on behalf of ECOSMART, including, but not limited to representative or agent of OAMPS Insurance Brokers and/or Arthur J. Gallagher Insurance Brokers (including James Forster and/or Melissa Mudge).

B. As used herein the words "CALIFORNIA BUSINESSES" means a company that you believed conducted business in California.

C. As used herein the word "CHANGED" or "CHANGES" means to modify, alter, change or restrict the terms or coverage of in any way between INSURANCE POLICY #1 and INSURANCE POLICY #2.

D. As used herein the words "CLAIMS MADE" means any claim made during the policy period, regardless of when the act that gave rise to the claim took place.

E. As used herein the words "COMBINED GENERAL & PRODUCTS LIABILITY POLICIES" means policies providing the same or similar general coverage to that contained in INSURANCE POLICY #1.

F. As used herein, the word "COMMUNICATION(S)" means any form of communication, including, but not limited to emails, letters (delivered by mail, personal delivery or otherwise), text, memorandum, facsimile, documents made available on the internet for viewing, downloading OR uploading (e.g. sharing Google Documents, Sharefile, Dropbox, etc.) and includes direct communications and also communications in which an individual is copied, blind copied, or in some fashion included in, or made privy to, the COMMUNICATION.

G. As used herein the words "DEFEND" or "DEFENDED" means to defend and indemnify in accordance with INSURANCE POLICY #1.

H. As used herein, the word "DOCUMENT" or "DOCUMENTS" is used herein to mean all "writings" as defined in California Evidence Code Section 250 (see text, below), including, but not limited to, all written, recorded, or graphic material, however produced or reproduced, of any



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kind in your possession, custody, or control, or in the possession, custody, or control of any officers, members, partners, employees, servants, or your agents or representatives, including, without limitation, letters, correspondence, telegrams, memoranda, records, minutes, contracts, agreements, memoranda, or records of telephone or personal conversations or conferences, interoffice communications, emails, sound recordings, handwritings, ELECTRONICALLY STORED INFORMATION, electronic data processing inputs, and memories of all kinds, including hard drives, CD ROM data, tapes and discs, computer reports and printouts, microfilm, bulletins, circulars, pamphlets, studies, notices, summaries, reports, books, teletype messages, bills of lading, invoices, work sheets, and index cards, or copies of such documents where originals are not available. The term "document" or "documents" includes any and all matter that relates in whole or in part to the subject referred to in a demand to produce. Where a document has been prepared in several copies that are not identical (or which by reason of subsequent modification, addition, or notation are no longer identical), each non-identical copy is a separate "document." DOCUMENT includes any COMMUNICATION.

Evidence Code Section 250: "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored."

I. As used herein the word "ECOSMART" means EcoSmart, Inc., its agents, employees, attorneys, accountants, investigators, insurance broker(s) and anyone else acting on its behalf, The Fire Company Pty Ltd, Esmart Group Pty Ltd, any employee, representative or agent of OAMPS Insurance Brokers and/or Arthur J. Gallagher Insurance Brokers (including James Forster and/or Melissa Mudge).

J. As used herein the words "ECOSMART PRODUCT(S)" means any fuel produced by ECOSMART that is intended for use by consumers, including but not limited to E-NRG.

1 K. As used herein the word "ELECTRONIC" means RELATING to technology having  
2 electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

3 L. As used herein the words "ELECTRONICALLY STORED INFORMATION" means  
4 information that is stored in an ELECTRONIC medium.

5 M. As used herein the word "FIRE COMPANY" means The Fire Company, Pty, Ltd., its  
6 agents, employees, attorneys, accountants, investigators, insurance broker(s) and anyone else  
7 acting on its behalf.  
8

9 N. As used herein, the words, "FLAME ARRESTOR" means deflagration and detonation  
10 prevention device, flashback arrestor, vapor flashback quencher, flame retarder, vapor flashback  
11 quenching guard or flame mitigation device.

12 O. As used herein the word "IDENTIFY" when referring to:

13 a. INSURANCE POLICY means:

14 (i) List in detail all policies covering negligence, product defect or any other  
15 form of legal action or claim and include:

16 (1) Name of policy;

17 (2) Coverage period

18 (3) Amount of coverage

19 (4) All individuals and ENTITIES covered by the policy

20 (5) Type of coverage

21 (6) Limits or exclusions of the policy

22 (7) All DOCUMENTS RELATING to the policy in relation to  
23 ECOSMART.

24 b. NOTICE means to:

25 i. State the type of COMMUNICATION used to convey the NOTICE;  
26  
27  
28

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1                   ii. State the date of the NOTICE; and

2  
3                   iii. Provide sufficient detail so that the NOTICE, if written, can be correctly  
4 identified when requesting production of it if it is a DOCUMENT.

5                   c. COMMUNICATION means to:

6                   i. State the type of communication, e.g., verbal, e-mail, letter, etc.;

7                   ii. State the date of the communication;

8                   iii. Summarize briefly what the communication related to and/or involved;

9                   iv. Name the individuals who signed the document and provide their address,  
10 telephone number and position with any entity, company or organization  
11 they represented when the signed the communication.

12                   v. State generally what the COMMUNICATIONS related to and involved.

13                   vi. Provide sufficient definition of the communication so that if it is a  
14 DOCUMENT it can be requested to be produced without ambiguity.

15                   d. DOCUMENT means to:

16                   i. Name the DOCUMENT consistent with its content and which YOU will  
17 recognize in relation to a demand to produce that DOCUMENT;

18                   ii. Provide a brief summary of the document;

19                   iii. Date of the DOCUMENT;

20                   iv. Purpose of the DOCUMENT;

21                   v. If executed, who signed the DOCUMENT, including the signator's name,  
22 address, telephone number, and position with YOU.

23                   O. As used herein the word INSURANCE means any form of liability insurance including,  
24 but not limited to General, Products OR Combined General & Products Liability Policies  
25 (including INSURANCE POLICY #1 OR INSURANCE POLICY #2).

26                   P. As used herein the words "INSURANCE POLICY" (other than specific references to  
27 INSURANCE POLICY #1 and INSURANCE POLICY #2) means any form of insurance which  
28 provides coverage (including indemnity) for claims made against the insured.

                  Q. As used herein the words "INSURANCE POLICY #1" means Liberty International  
Underwriters Combined General & Products Liability Policy #ME-CAS-12-438176 with a period  
of insurance 4 p.m. April 30, 2013 to 4 p.m. April 30, 2014. (Exhibit 1)



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1 R. As used herein the words "INSURANCE POLICY #2" means Liberty International  
2 Underwriters Combined General & Products Liability Policy #SY-CAS-13-438167 with a period  
3 of insurance 4 p.m. April 30, 2014 to 4 p.m. April 30, 2015. (Exhibit 2)

4 S. As used herein the word "LAWSUIT(S)" means any lawsuit based on personal injuries or  
5 death resulting from an ECOSMART product.

6 T. As used herein the words "LEWIS V. ECOSMART" means Lewis v. EcoSmart et al.,  
7 Case No. SCV-256907 (Exhibit 3) and also includes any amendments thereto.

8 U. As used herein the words LIBERTY MUTUAL means Liberty Mutual Insurance Company  
9 and any agent, employees, representatives, attorneys (as to non-privileged communications),  
10 investigators, and anyone else acting on Liberty Mutual Insurance Company behalf or of any  
11 subsidiary or entity related to Liberty Mutual Insurance Company..

12 V. As used herein the word "NOTICE" means notice as required by Insurance Code § 678.1.

13 W. As used herein the words "NOTIFY" or "NOTIFIED" means put on notice or advise or  
14 report to in any manner, whether formally, informally or otherwise.

15 X. As used herein the word "OR" means and/or.

16 Y. As used herein, the words "PRINCIPAL OFFICE" means the place designated on the  
17 California Secretary of State Statement of Information or the office of the headquarters of the  
18 company.

19 Z. As used herein the words "PRODUCTS LIABILITY POLICIES" mean any insurance  
20 policy that includes Products Liability coverage, whether exclusively or in combination with  
21 another form of coverage.

22 AA. As used herein the words "REGARDING" or "RELATING" when used with respect to  
23 documents shall mean any and all documents that in any way or in any manner refer to, relate to,  
24 reflect, concern, contain, embody, or describe the subject matter referred to in the list of  
25 documents to be produced as identified below.

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BB. As used herein, the word "REGARDING" OR "RELATING " when used with respect to a fact or person includes referring to, alluding to, responding to, concerning, connected with, commenting on, about, regarding, discussing, constituting, evidencing or pertaining to.

CC. As used herein the word "RELATIONSHIP" means any way that Liberty Mutual Insurance Company is connected to or involved with Liberty International Underwriters, whether as an owner, subsidiary, a division, a trading company for, or otherwise.

DD. As used herein, the word, "RISK" means the exposure to danger or harm.

EE. As used herein, the word "TERM" means the clauses, coverages, conditions, limitations, endorsements, and any other provision of the insurance policy.

FF. As used herein, the words "TRADING NAME" refers to meaning as that term is used in INSURANCE POLICY #1 and INSURANCE POLICY #2

GG. As used herein, the words, "YOU" and "YOUR" means Liberty Mutual Insurance Company and any agent, employees, representatives, attorneys (as to non-privileged communications), investigators, and anyone else acting on behalf of Liberty Mutual Insurance Company or of any subsidiary or entity(ies) related thereto.

For Interrogatories 17-19, 27-40 and 47-49, YOU also means LIBERTY INTERNATIONAL UNDERWRITING.

**SPECIAL INTERROGATORY NO. 1:**

IDENTIFY all COMMUNICATIONS between YOU and LIBERTY INTERNATIONAL UNDERWRITERS RELATING to INSURANCE POLICY #1.

**SPECIAL INTERROGATORY NO. 2:**

IDENTIFY all COMMUNICATIONS between YOU and LIBERTY INTERNATIONAL UNDERWRITERS RELATING to INSURANCE POLICY #2.

///

**SPECIAL INTERROGATORY NO. 3:**

IDENTIFY all INSURANCE POLICIES issued by YOU covering ECOSMART from April 1, 2013 to April 1, 2016.

**SPECIAL INTERROGATORY NO. 4:**

IDENTIFY all INSURANCE POLICIES issued by LIBERTY INTERNATIONAL UNDERWRITING covering ECOSMART from April 1, 2013 to April 1, 2016.

**SPECIAL INTERROGATORY NO. 5:**

IDENTIFY all COMMUNICATIONS between YOU and ECOSMART RELATING to INSURANCE POLICY #1.

**SPECIAL INTERROGATORY NO. 6:**

IDENTIFY all COMMUNICATIONS between YOU and ECOSMART RELATING to INSURANCE POLICY #2.

**SPECIAL INTERROGATORY NO. 7:**

IDENTIFY all COMMUNICATIONS between YOU and LIBERTY INTERNATIONAL UNDERWRITERS RELATING to INSURANCE POLICY #1.

**SPECIAL INTERROGATORY NO. 8:**

IDENTIFY all COMMUNICATIONS between YOU and LIBERTY INTERNATIONAL UNDERWRITERS RELATING to INSURANCE POLICY #2.

**SPECIAL INTERROGATORY NO. 9:**

IDENTIFY all COMMUNICATIONS between YOU and LIBERTY INTERNATIONAL UNDERWRITERS RELATING to the denial of coverage to ECOSMART in *LEWIS V. ECOSMART*.

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1 **SPECIAL INTERROGATORY NO. 10:**

2 IDENTIFY all COMMUNICATIONS between YOU and BROKER RELATING to  
3 INSURANCE POLICY #1.

4 **SPECIAL INTERROGATORY NO. 11:**

5  
6 IDENTIFY all COMMUNICATIONS between YOU and BROKER RELATING to  
7 INSURANCE POLICY #2.

8 **SPECIAL INTERROGATORY NO. 12:**

9 IDENTIFY all COMMUNICATIONS between YOU and BROKER to the denial of  
10 coverage to ECOSMART in *LEWIS V. ECOSMART*.

11 **SPECIAL INTERROGATORY NO. 13:**

12 IDENTIFY all COMMUNICATIONS between YOU and FIRE COMPANY RELATING  
13 to INSURANCE POLICY #1.

14 **SPECIAL INTERROGATORY NO. 14:**

15 IDENTIFY all COMMUNICATIONS between YOU and FIRE COMPANY  
16 RELATING to INSURANCE POLICY #2.

17 **SPECIAL INTERROGATORY NO. 15:**

18 IDENTIFY all COMMUNICATIONS between YOU and FIRE COMPANY to the denial  
19 of coverage to ECOSMART in *LEWIS V. ECOSMART*.

20 **SPECIAL INTERROGATORY NO. 16:**

21 Why did YOU decline to provide a defense to ECOSMART in *LEWIS V. ECOSMART*?

22 **SPECIAL INTERROGATORY NO. 17:**

23 Why did YOU decline to indemnify ECOSMART in *LEWIS V. ECOSMART*?

24  
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**SPECIAL INTERROGATORY NO. 18:**

Why did LIBERTY INTERNATIONAL UNDERWRITERS decline to provide a defense to ECOSMART in *LEWIS V. ECOSMART*?

**SPECIAL INTERROGATORY NO. 19:**

Why did LIBERTY INTERNATIONAL UNDERWRITERS decline to indemnify ECOSMART in *LEWIS V. ECOSMART*?

**SPECIAL INTERROGATORY NO. 20:**

REGARDING the statement by Angus Kench in an email dated April 21, 2015 (Exhibit 4), to wit "Based on the summons and in particular the circumstances summarised above the policy **will not respond** to this current claim" [emphasis added], would INSURANCE POLICY #1 have "responded" to the claims if it were still in effect as of June 8, 2014.

**SPECIAL INTERROGATORY NO. 21:**

If INSURANCE POLICY #1 was in full effect when Nicolette Lewis was injured as noted in *LEWIS v. ECOSMART*, would YOU have declined to indemnify ECOSMART in *LEWIS V. ECOSMART*?

**SPECIAL INTERROGATORY NO. 22:**

Would YOU have agreed to indemnify ECOSMART in *LEWIS v. ECOSMART* if INSURANCE POLICY #1 was in full effect when Nicolette Lewis was injured as noted in *LEWIS v. ECOSMART*.

**SPECIAL INTERROGATORY NO. 23:**

If INSURANCE POLICY #1 were in full effect when Nicolette Lewis was injured as noted in *LEWIS V. ECOSMART*, would YOU have DEFENDED ECOSMART in *LEWIS V. ECOSMART*?

///

1 **SPECIAL INTERROGATORY NO. 24:**

2 State in detail all facts RELATING to YOUR acceptance or declination to DEFEND  
3 ECOSMART in *LEWIS v. ECOSMART* if INSURANCE POLICY #1 was in full effect when  
4 Nicolette Lewis was injured, as noted in *LEWIS v. ECOSMART*.

5 **SPECIAL INTERROGATORY NO. 25:**

6  
7 What time frame was INSURANCE POLICY #1 in effect?

8 **SPECIAL INTERROGATORY NO. 26:**

9  
10 Were the TERMS of policy INSURANCE POLICY #1 CHANGED?

11 **SPECIAL INTERROGATORY NO. 27:**

12 If the terms of policy INSURANCE POLICY #1 CHANGED, state in detail what TERMS  
13 were CHANGED.

14 **SPECIAL INTERROGATORY NO. 28:**

15 If the terms of policy INSURANCE POLICY #1 CHANGED, state in detail all facts  
16 RELATING to the CHANGE.

17 **SPECIAL INTERROGATORY NO. 29:**

18 If the terms of policy INSURANCE POLICY #1 CHANGED, state in detail why  
19 CHANGES were made.

20 **SPECIAL INTERROGATORY NO. 30:**

21 If the terms of policy INSURANCE POLICY #1 CHANGED, IDENTIFY all  
22 DOCUMENTS RELATING to the CHANGE.

23 **SPECIAL INTERROGATORY NO. 31:**

24 If the terms of policy INSURANCE POLICY #1 CHANGED, IDENTIFY all persons with  
25 knowledge RELATING to the CHANGE.  
26  
27  
28



**SPECIAL INTERROGATORY NO. 32:**

If the terms of policy INSURANCE POLICY #1 CHANGED, IDENTIFY all facts YOU believe each person with knowledge RELATING to the CHANGE has RELATING to the CHANGE.

**SPECIAL INTERROGATORY NO. 33:**

Do YOU contend that YOU were justified in denying ECOSMART'S insurance coverage for *LEWIS V. ECOSMART*?

**SPECIAL INTERROGATORY NO. 34:**

If YOU contend that YOU were justified in denying ECOSMART'S insurance coverage for *LEWIS V. ECOSMART*, state all facts REGARDING this contention.

**SPECIAL INTERROGATORY NO. 35:**

If YOU contend that YOU were justified in denying ECOSMART'S insurance coverage for *LEWIS V. ECOSMART*, IDENTIFY all DOCUMENTS REGARDING this contention.

**SPECIAL INTERROGATORY NO. 36:**

If YOU contend that YOU were justified in denying ECOSMART'S insurance coverage for *LEWIS v. ECOSMART*, IDENTIFY all persons with knowledge REGARDING YOUR contention.

**SPECIAL INTERROGATORY NO. 37:**

If YOU contend that YOU were justified in denying ECOSMART'S insurance for *LEWIS v. ECOSMART*, for each person with knowledge REGARDING YOUR contention, state in detail what YOU believe that person has knowledge of.

**SPECIAL INTERROGATORY NO. 38:**

Do YOU contend that YOU provided NOTICE to ECOSMART REGARDING CHANGES to INSURANCE POLICY #1?

**SPECIAL INTERROGATORY NO. 39:**

If YOU contend that YOU provided NOTICE to ECOSMART REGARDING CHANGES to INSURANCE POLICY #1, IDENTIFY the NOTICE.

**SPECIAL INTERROGATORY NO. 40:**

If YOU contend that YOU provided NOTICE to ECOSMART REGARDING CHANGES to INSURANCE POLICY #1, state all facts REGARDING YOUR contention.

**SPECIAL INTERROGATORY NO. 41:**

If YOU contend that YOU provided NOTICE to ECOSMART REGARDING CHANGES to INSURANCE POLICY #1, IDENTIFY all DOCUMENTS REGARDING YOUR contention.

**SPECIAL INTERROGATORY NO. 42:**

If YOU contend that YOU provided NOTICE to ECOSMART REGARDING CHANGES to INSURANCE POLICY #1, IDENTIFY all persons with knowledge REGARDING YOUR contention.

**SPECIAL INTERROGATORY NO. 43:**

If YOU contend that YOU provided NOTICE to ECOSMART REGARDING CHANGES to INSURANCE POLICY #1, for each person with knowledge REGARDING YOUR contention, state in detail what YOU believe that person has knowledge of.

**SPECIAL INTERROGATORY NO. 44:**

Do YOU contend that YOU did not provide NOTICE to ECOSMART REGARDING CHANGES to INSURANCE POLICY #1?

**SPECIAL INTERROGATORY NO. 45:**

If YOU contend that YOU did not provide NOTICE to ECOSMART REGARDING CHANGES to INSURANCE POLICY #1, state all facts REGARDING YOUR contention.

///

**SPECIAL INTERROGATORY NO. 46:**

If YOU contend that YOU did not provide NOTICE to ECOSMART REGARDING CHANGES to INSURANCE POLICY #1, for each person with knowledge REGARDING YOUR contention, state in detail what YOU believe that person has knowledge of.

**SPECIAL INTERROGATORY NO. 47:**

Why was the date June 18, 2014 included in paragraph 7.24.3.3 of INSURANCE POLICY #2?

**SPECIAL INTERROGATORY NO. 48:**

IDENTIFY all COMMUNICATIONS REGARDING June 18, 2014 being the date included in paragraph 7.24.3.3 of INSURANCE POLICY #2?

**SPECIAL INTERROGATORY NO. 49:**

IDENTIFY all persons with knowledge REGARDING June 18, 2014 being the date included in paragraph 7.24.3.3 of INSURANCE POLICY #2?

**SPECIAL INTERROGATORY NO. 50:**

IDENTIFY all DOCUMENTS REGARDING June 18, 2014 being the date included in paragraph 7.24.3.3 of INSURANCE POLICY #2?

**SPECIAL INTERROGATORY NO. 51:**

IDENTIFY each person who signed INSURANCE POLICY #1.

**SPECIAL INTERROGATORY NO. 52:**

IDENTIFY each person who signed INSURANCE POLICY #2.

**SPECIAL INTERROGATORY NO. 53:**

IDENTIFY all INSURANCE POLICIES YOU issued to ECOSMART during the last 10 years.



**SPECIAL INTERROGATORY NO. 54:**

How many COMBINED GENERAL & PRODUCTS LIABILITY POLICIES have YOU issued to ECOSMART in the past ten years?

**SPECIAL INTERROGATORY NO. 55:**

How many insurance policies have YOU underwritten for CALIFORNIA BUSINESSES from January 1, 2008 to the date of YOUR response to this interrogatory?

**SPECIAL INTERROGATORY NO. 56:**

How many insurance policies for CALIFORNIA BUSINESSES did YOU have in effect on April 30, 2014?

**SPECIAL INTERROGATORY NO. 57:**

How many PRODUCTS LIABILITY POLICIES for CALIFORNIA BUSINESSES did YOU have in effect on April 30, 2014?

**SPECIAL INTERROGATORY NO. 58:**

How many COMBINED GENERAL & PRODUCTS LIABILITY POLICIES for CALIFORNIA BUSINESSES did YOU have in effect on April 30, 2014?

**SPECIAL INTERROGATORY NO. 59:**

Did YOU COMMUNICATE with a BROKER REGARDING INSURANCE for ECOSMART from April 30, 2013 to present?

**SPECIAL INTERROGATORY NO. 60:**

If YOU COMMUNICATED with a BROKER REGARDING INSURANCE for ECOSMART from April 30, 2013 to present, IDENTIFY the COMMUNICATION(S).

**SPECIAL INTERROGATORY NO. 61:**

What is the legal RELATIONSHIP between YOU and LIBERTY MUTUAL INSURANCE COMPANY?

**SPECIAL INTERROGATORY NO. 62:**

What is the corporate form and status of LIBERTY INTERNATIONAL UNDERWRITERS in Australia (or any state jurisdiction therein)?

**SPECIAL INTERROGATORY NO. 63:**

IDENTIFY what type of entity(ies) YOU have been for the past 10 years.

**SPECIAL INTERROGATORY NO. 64:**

What does TRADING NAME mean as used in YOUR insurance policies?

**SPECIAL INTERROGATORY NO. 65:**

IDENTIFY all DOCUMENTS REGARDING what TRADING NAME means as used in YOUR insurance policies.

**SPECIAL INTERROGATORY NO. 66:**

How did LIBERTY MUTUAL INSURANCE COMPANY's acquisition of Ironshore Inc. affect the legal RELATIONSHIP between LIBERTY MUTUAL INSURANCE COMPANY AND LIBERTY INTERNATIONAL UNDERWRITERS in Australia (or any state jurisdiction therein)?

**SPECIAL INTERROGATORY NO. 67:**

If YOU contend LIBERTY INTERNATIONAL UNDERWRITERS is a separately organized business entity, describe the ownership and voting interests held or controlled by LIBERTY MUTUAL INSURANCE COMPANY?

**SPECIAL INTERROGATORY NO. 68:**

If YOU contend LIBERTY INTERNATIONAL UNDERWRITERS is a separately organized business entity, describe any special rights held by LIBERTY MUTUAL INSURANCE COMPANY to direct the operations of LIBERTY INTERNATIONAL UNDERWRITERS, including but not limited to the power to nominate, elect, or appoint its directors and officers.

**SPECIAL INTERROGATORY NO. 69:**

If YOU contend LIBERTY INTERNATIONAL UNDERWRITERS is a separately organized business entity, who are its directors and officers?

**SPECIAL INTERROGATORY NO. 70:**

If YOU contend LIBERTY INTERNATIONAL UNDERWRITERS is a separately organized business entity, do any directors or officers hold positions on the board or as officers or employees of LIBERTY MUTUAL INSURANCE COMPANY?

**SPECIAL INTERROGATORY NO. 71:**

IDENTIFY each person who is a director or officer of LIBERTY INTERNATIONAL UNDERWRITERS that holds a position on the board or as an officer or employee of LIBERTY MUTUAL INSURANCE COMPANY.

**SPECIAL INTERROGATORY NO. 72:**

IDENTIFY any and all licenses YOU've held in California for the past 10 years.


**SPECIAL INTERROGATORY NO. 73:**

Were you continuously admitted as a commercial insurance company in California from April 1, 2013 to August 1, 2015?

DATED: February 13, 2018

PERRY, JOHNSON, ANDERSON,  
MILLER & MOSKOWITZ, LLP

By

  
LESLIE R. PERRY  
HEATHER-ANN YOUNG  
Attorneys for Plaintiffs  
NICOLETTE LEWIS, ALEXIS LEWIS,  
MARGRETT LEWIS and JEFFREY  
LEWIS